

F. STANDARD FORMS OF LEASE AND RELATED DOCUMENTS

INSTRUCTIONS FOR COMPLETING AND EXECUTING COMMONWEALTH OF MASSACHUSETTS STANDARD LEASING LEGAL FORMS

**INSTRUCTIONS
FOR COMPLETING AND EXECUTING
COMMONWEALTH OF MASSACHUSETTS STANDARD LEASING FORMS**

**STANDARD OFFICE LEASE
MODIFICATION AFTER EXECUTION AND DELIVERY OF LEASE
STANDARD ESTOPPEL CERTIFICATE
SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENMENT AGREEMENT
“HOUSEKEEPING” INSTRUCTIONS FOR LEASING DOCUMENTS**

The Office of Leasing and State Office Planning (“OLSOP”) and the Office of the General Counsel (“OGC”) of the Division of Capital Asset Management and Maintenance (“DCAM”) have developed standard forms to be used in all leasing transactions where a state agency occupies leased space. These forms must be included with every Request for Proposals (“RFP”) for leased space.

The standard leasing forms establish the rights and obligations of Landlord, the Commonwealth, the User Agency or User Agencies, and Landlord’s mortgagees with respect to the Premises.

Substantive changes to these forms must be avoided. Changes in the standard leasing forms may result in the Commonwealth waiving important legal rights and may impose unacceptable risks and financial obligations on the Commonwealth and the User Agency that occupies the Premises. Changes also may result in violation of the law or the Constitution of the Commonwealth.

No changes may be made within the body of any standard leasing form. All changes in any standard leasing form must appear in a rider that is attached to the standard leasing form.

STANDARD OFFICE LEASE

NO FORM OF LEASE MAY BE USED OTHER THAN THE *Standard Office Lease*.

There are two versions of *Standard Office Lease*:

Standard Office Lease - Form DPL is to be used by OLSOP whenever DCAM acts for the Commonwealth on behalf of the agency (the “User Agency”) that will occupy the space (the “Premises”).

Standard Office Lease - Form APL is to be used by those agencies to which DCAM has delegated authority to procure and enter into agreements for leased space pursuant to the last two sentences of the second full paragraph of G.L. c. 7, §40E.

The *Standard Office Lease* comprises three parts: (i) the main body of the agreement, (ii) any Rider to the lease, and (iii) the standard Exhibits to the lease.

A. MAIN BODY OF STANDARD OFFICE LEASE

Section

Lease Provision

- 1.1 **Date of Lease.** This is the date on which the DCAM Commissioner (or the authorized signatory of the agency to which lease-procurement authority has been delegated by DCAM, which means that the *Standard Office Lease - Form APL* is used) signs the Lease. The date must be left blank until the lease is executed by an authorized signatory of the agency having delegated authority to cause the Commonwealth to enter into that lease.
- 1.1 **Landlord.** The named landlord (“Landlord”) must be the owner of the Premises or the tenant of the Premises if the Premises are subleased to the Commonwealth. The name of Landlord must appear in the Commonwealth’s lease exactly as Landlord’s name appears on Landlord’s record title to the Premises, if Landlord is the owner, or exactly as Landlord’s name appears in Landlord’s lease, if the Premises are subleased to the Commonwealth.
- 1.1 **Original Address of Landlord.** This is Landlord’s mailing address and is the address for all notices to Landlord.
- 1.1 **Tenant.** Tenant is always the Commonwealth of Massachusetts.

In *Standard Office Lease - Form DPL*, Tenant is correctly identified as “the Commonwealth of Massachusetts acting by and through its Division of Capital Asset Management and Maintenance (“DCAM”) of the Executive Office for Administration and Finance on behalf of the User Agency.” If a term-of-art for Tenant were parenthetically designated, it would appear at the very end, e.g., “the Commonwealth of Massachusetts acting by and through its Division of Capital Asset Management and Maintenance (“DCAM”) of the Executive Office for Administration and Finance on behalf of the User Agency (“Tenant”).”

In *Standard Office Lease - Form APL*, Tenant is correctly identified as “the Commonwealth of Massachusetts acting by and through its _____ pursuant to a delegation of authority from the Division of Capital Asset Management and Maintenance (“DCAM”) of the Executive Office for Administration and Finance.” In the blank, insert the complete, official name (i.e., the name conferred by the legislature) of the agency to which lease-procurement authority has been delegated by DCAM. No abbreviations or other monikers should be used. After the document so denominates the agency, the document may provide that thereafter in the document, the agency shall be referred to by a term-of-art. If a term-of-art for Tenant were parenthetically designated, it would appear at the very end, e.g., “The Commonwealth of Massachusetts acting by and through its _____ pursuant to a

delegation of authority from the Division of Capital Asset Management and Maintenance (“DCAM”) of the Executive Office for Administration and Finance (“Tenant”).”

Please note: The absence of commas is intentional in the two identifications of Tenant.

- 1.1 **Original Address of Tenant.** In *Standard Office Lease - Form DPL*, this will be the mailing address of DCAM’s central or headquarters office. In *Standard Office Lease - Form APL*, this will be the mailing address of the agency to which lease-procurement authority has been delegated by DCAM.
- 1.1 **Tenant’s Representative.** In *Standard Office Lease - Form DPL*, insert the name and mailing address of the person within the User Agency who will be responsible for all communication with Landlord regarding Landlord’s Improvements and other lease matters. In *Standard Office Lease - Form APL*, insert the name and mailing address of the person, within the agency to which lease-procurement authority has been delegated by DCAM, who will be responsible for all communication with Landlord regarding Landlord’s Improvements and other lease matters.
- 1.1 **User Agency** (applicable only to the *Standard Office Lease - Form DPL*). Insert the complete, official name of the User Agency (i.e., the name conferred upon the agency by the legislature) that will occupy the Premises. In *Standard Office Lease - Form APL*, this will be the agency to which lease-procurement authority has been delegated by DCAM, and it will be so identified within the definition of “Tenant.” Neither abbreviations nor other monikers should be used. After the document names the User Agency or the agency to which leasing authority has been delegated by DCAM, the document may provide that thereafter in the document, the User Agency, or the agency to which leasing authority has been delegated by DCAM, shall be referred to by a term-of-art.
- 1.1 **Original Address of User Agency.** If completing the *Standard Office Lease - Form DPL*, insert the mailing address of the central or headquarters office of User Agency or of the agency to which leasing authority has been delegated by DCAM. If completing the *Standard Office Lease – Form APL*, this will be the mailing address for all notices to Tenant and will be the central or headquarters address of the agency to which leasing authority has been delegated by DCAM.
- 1.1 **Building Address.** Insert the street address (not a post office box) of the Building in which the Premises are located.
- 1.1 **Premises.** Indicate the floors of the Building on which the Premises are located (e.g., 3rd and 4th) and the suite number(s) of the Premises, if applicable.

- 1.1 **Usable Area of the Premises.** Insert the usable area (expressed in square feet) of the office space and of any storage space within the Premises, as indicated by Landlord's measured drawings (Lease Exhibit A-1).
- 1.1 **Parking Spaces.** Indicate the number and location, if applicable (e.g., "Building Garage, spaces #31, #32 and #33"), of any parking spaces (reserved or otherwise) provided in the lease. Parking spaces, reserved or otherwise, are to be provided in a lease by the Commonwealth only for state-owned vehicles and/or for the private vehicles of state officials of the rank of Commissioner or above, in accordance with a directive of the Executive Office for Administration and Finance.
- 1.1 **Permitted Uses.** In order to give the User Agency or the agency to which leasing authority has been delegated by DCAM maximum flexibility in using the Premises, this should be written as broadly as possible.
- 4.2 **Working Drawings.**
- Paragraph 1: If Landlord's Improvements are limited in scope, complete plans and specifications that are prepared by a licensed architect may not be required. If Working Drawings are not required, Landlord's Improvements should be delineated in the *Rider to Lease* (see Section B, below). If complete plans and specifications are required, place an "x" in the box next to each item that will be required as part of Landlord's Working Drawings.
- Paragraph 2: Insert the deadline (i.e., the number of weeks after lease execution) for Landlord to submit Working Drawings to Tenant for Landlord's Improvements. If Working Drawings are not required, scheduling requirements must be delineated in the *Rider to Lease*.
- 4.3 **Completion Date.** Insert the deadline (i.e., number of weeks after Lease execution) for Landlord to complete Landlord's Improvements and make the Premises available for occupancy by the User Agency or the agency to which leasing authority has been delegated by DCAM. This deadline must conform to the RFP unless a different deadline has been negotiated and agreed upon by Landlord and Tenant.

B. RIDER TO LEASE

A *Rider to Lease* is used to modify the *Standard Office Lease*. The *Rider to Lease* is attached immediately after the *Standard Office Lease*. NO MODIFICATIONS ARE TO BE MADE WITHIN THE STANDARD OFFICE LEASE ITSELF.

1. All modifications must be made in a *Rider to Lease* using the standard cover and signature pages for the *Rider to Lease* that are included with the *Standard Office Lease*. Under no circumstances may any changes whatsoever be made within the main body of the *Standard Office Lease*. This prohibition covers all changes, whether substantive, procedural, business, legal, or formatting.

2. Each modification must be made in a separately numbered paragraph.
3. Each modification must identify the article, section, and/or paragraph of the *Standard Office Lease* that is being modified and must indicate precisely what text is being deleted, added, or otherwise changed. Use the present tense, not the future tense, use the active voice, not the passive voice, and do not capitalized words that are not defined terms-of-art, e.g., when “section” or “article” is used to refer to a part of the Lease, neither “section” nor “article” should be capitalized. The following illustrates the correct use of the elements of style that are identified in the immediately preceding sentence: “Insert the following sentence as the second sentence of section 4.3:” For more elements of style, please see item “D. Language Usage” under the heading “‘Housekeeping’ Instructions for Leasing Documents” at the end of these instructions. A highly recommended book is *The Elements of Legal Style, Second Edition*, by Bryan A. Garner (Editor in Chief of *Black’s Law Dictionary*), Oxford University Press, 2002.
4. Modification of the terms of the *Standard Office Lease* must be limited to business terms. For example, if the User Agency or the agency to which leasing authority has been delegated by DCAM currently occupies the Premises and Landlord is making only minor, cosmetic improvements to the Premises in connection with the new tenancy, a list of these improvements may be stated in a *Rider to Lease* in lieu of developing Working Drawings, and the provisions of Section 4.1 would be modified accordingly.
5. All modifications must be approved in advance by DCAM unless leasing authority has been delegated to the User Agency and the *Standard Office Lease – Form APL* is used.
6. Modifications that affect the legal rights, obligations, liabilities, responsibilities, exposure, and remedies of the Commonwealth must not be made without the prior written approval of the Office of the General Counsel of DCAM. This is applicable to both the *Standard Office Lease – Form DPL* and the *Standard Office Lease – Form APL*, as well as all other standard leasing documents discussed in these instructions. Examples of constitutional, statutory, and other prohibitions and limitations include, without limitation, the following:
 - (a) The agencies of the Commonwealth are prohibited from indemnifying any third party as to any matter, from agreeing to “hold” any third party “blameless and harmless” as to any matter, and/or from agreeing to “defend” any third party as to any matter, unless the legislature has authorized a specific exception to the prohibition. If there is such an exception, the undertaking is limited to the specifics of the exception. Amendments Article 84 of the Constitution of the Commonwealth establishes this prohibition.
 - (b) G.L. c. 29, §30, prohibits agencies of the Commonwealth from insuring the property of the Commonwealth. Also, the Commonwealth is self-insured as to property matters. The Commonwealth does not provide third-party insurance coverage for other parties. This prohibition does not prevent the Commonwealth from paying “additional rent” to a landlord that includes the cost of insurance that

is procured by a landlord with respect to the Premises and/or with respect to any common areas around the Premises.

- (c) G.L. c. 258 regulates tort claims (as opposed to contractual claims) against the Commonwealth. No leasing document may contain anything that is inconsistent with these statutory provisions. G.L. c. 258 provides for indemnification of public employees by public employers, and it allows public employers to maintain third-party insurance coverage for the indemnification of public employees, but these provisions have no impact on the prohibitions of items 6. (a) and 6. (b).
- (d) The agencies of the Commonwealth may agree to a standard of ordinary “reasonableness” or “reasonable,” but agencies of the Commonwealth must not agree to be governed by a standard such as “commercial reasonableness” or “commercially reasonable,” or by any standard other than ordinary “reasonableness” or “reasonable.”
- (e) G.L. c. 29, §29C, regulates interest, “late charges,” “penalties,” and similar concepts that may be payable by the legislature or by an agency of the Commonwealth in connection with the acquisition of property or services from commercial vendors. However, no agency of the Commonwealth should agree to incur any such liability or obligation, or to make any such payment in connection with a lease of real estate.
- (f) No lease should provide for any waiver of any right, remedy, or defense by an agency of the Commonwealth. The Office of the Attorney General of the Commonwealth represents the agencies of the Commonwealth in litigation and makes all strategic decisions, in consultation with the represented agency and its secretariat. The forms of *Standard Office Lease* provided that whenever Landlord has an duty to indemnify, save harmless, and defend Tenant from all liability, claim, or cost, or some similar duty, such duty must be fulfilled “under the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with G.L. c. 12, §3.” Accordingly, no lease should contain any provision whereby an agency of the Commonwealth waives any right, remedy, or defense pertaining to litigation (e.g., the right to a civil trial-by-jury), or whereby an agency of the Commonwealth waives any other right.
- (g) Under no circumstances may a lease by an agency of the Commonwealth modify the requirement that the agency’s payment obligations are subject to appropriation and allotment. See G.L. c. 29, §27.
- (h) The warranties and representations in Section 5.1 of the *Standard Office Lease*, and similar provisions in other standard leasing documents issued by DCAM, should not be modified. Because of the statutory existence and regulation of the agencies of the Commonwealth that are authorized to lease real estate, and the certifications by the Commonwealth’s signatories that appear in the signature blocks of many such documents, any request for the inclusion of reciprocal or similar warranties and representations by the Commonwealth should be declined.

C. **EXHIBITS**

The *Exhibits* are attached immediately after the *Rider to Lease* (if any) and are part of the Lease.

Exhibit A. Landlord must provide a plan of the Building that shows the location of the Premises within the Building. If the User Agency or the agency to which leasing authority has been delegated by DCAM will occupy the entire Building, *Exhibit A* must be a plan of the entire property, showing the location of the Building and including a metes-and-bounds legal description of the property.

Exhibit A-1. Landlord must provide measured drawings of the Premises that must be approved by Tenant and attached as *Exhibit A-1*, as provided by Section 2.2.

Exhibit A-2. If parking spaces (reserved or otherwise) that are provided by the lease are on an outdoor surface lot on Landlord's property, or if parking spaces that are provided by the lease are inside the Building but are not adequately identified by a number or letter in Section 1.1 of the Lease, the location of these parking spaces must be shown on a plan provided by Landlord and attached as *Exhibit A-2*. Parking spaces, reserved or otherwise, are to be provided in a lease by the Commonwealth only for state-owned vehicles and/or for the private vehicles of state officials of the rank of Commissioner or above, in accordance with a directive of the Executive Office for Administration and Finance.

Exhibit B. A Schematic Space Plan of the Premises, approved by both Landlord and Tenant, must be attached as *Exhibit B*, as provided by Section 4.1.

Exhibit C. The Specifications for the Premises, as they appeared in the RFP, with any deletions, additions, or other modifications that are negotiated and agreed upon by Landlord and Tenant, must be attached as *Exhibit C*, as provided by Section 4.1. It may be appropriate to break down *Exhibit C* into as many as five *Exhibits*. For example:

Exhibit C-1: Landlord Services

Exhibit C-2: Tenant Improvements

Exhibit C-3: Landlord's Improvements to the Premises

Exhibit C-4: Landlord's Base Building Improvements

Exhibit C-5: Improvement Allowance Work

The extent of the "break-down" of *Exhibit C* and the nomenclature will be determined by the circumstances of each lease. If *Exhibit C* is "broken down," be sure to reflect the "break-down" on the last page of Section 1.2, Table of Contents. Regarding "Tenant's Improvements," public funds may never be expended to improve private property. If there are "Tenant's Improvements," the same must be made, performed, and paid for by Landlord. The costs of "Tenant's Improvements" are typically part of the calculation of the agreed rent.

Exhibit D. Landlord must provide a Construction Schedule for completion of Landlord's Improvements. The Construction Schedule must be approved by Tenant and attached as *Exhibit D*, as referenced in Section 4.3.

Exhibit E. Landlord must complete the Beneficial Interest Disclosure Statement (*Exhibit E*). It is required by G.L. c. 7, §40J. Particular attention must be given to items 5 and 6 of this form. These items must list the individual people who have a beneficial interest in the Lease, not merely the corporation, the trust, the partnership, or another business entity that may be named as Landlord. For example, if Landlord is a corporation, item 5 must list the corporation and its stockholders (subject to the statutory exemption in G.L. c. 7, §40J, for publicly traded companies with no stockholder owning more than 10% of the stock); if Landlord is a trust, item 5 must list the trust and the beneficiaries of the trust; if Landlord is a partnership, item 5 must list the partnership and each partner; etc. In the partnership example, if the partners include business entities, the stockholders, partners, etc., of those entities also must be named. Other than the statutory exception for publicly traded companies, no exceptions are permitted. It's like peeling an onion: Each layer must be stripped away to reveal all beneficial interests in the Lease. An individual authorized to sign on Landlord's behalf must sign this form, and it must be notarized. **NOTE:** G.L. c. 7, §40J, requires that a new Beneficial Interest Disclosure Statement must be filed within 30 days after any change in beneficial interest.

Exhibit F. *Exhibit F* is Landlord's certification of tax and employment security compliance. This certification is required by G.L. c. 62C, §49A, and by G.L. c. 151A, §19A. *Exhibit F* must include Landlord's federal taxpayer identification number. An individual authorized to sign on Landlord's behalf must sign this form, and it must be notarized.

Exhibit 3-APL. If using the *Standard Office Lease – Form APL*, attach a copy of the *Form 3-APL* that has been executed by the Commissioner of DCAM.

MODIFICATION AFTER EXECUTION AND DELIVERY **OF STANDARD OFFICE LEASE**

After a *Standard Office Lease* is executed and delivered, its terms may be modified only by a written, properly executed modifying agreement by Landlord and Tenant. Such a modifying agreement is entitled “_____ *Amendment to Lease.*” The blank immediately preceding “*Amendment*” is replaced by a sequential word, e.g., “*First,*” “*Second,*” “*Third,*” etc., as the case may be. If the modifying agreement extends the term of a *Standard Office Lease*, the words “*and Extension of Lease*” may immediately follow “*Lease.*” A *Standard Office Lease* is modified in order to extend the term, change the rent, increase or reduce the amount of leased space, and for other purposes.

CAUTION: State agencies may not substitute a modifying agreement for the open and competitive space-procurement process required by G.L. c. 7, nor may state-agency leases be modified in a manner that is not “in the spirit of” fair competition.

A. RECITALS

Every lease modification contains introductory paragraphs that serve to identify the document being modified, the parties to the agreement, the purpose of the amendment, etc. These should be completed as follows:

1. Identify Lease and Parties -- Some buildings have multiple state-agency leases. To avoid confusion regarding which of the Commonwealth's or agency's leases is being modified, the amendment must identify the date of the original Lease, the location of the Building and Premises and the name of the Landlord (current and any predecessor), Tenant and User Agency. The entity named as "Landlord" must be the same "Landlord" named in Section 1.1 of the Lease unless there has been a change in ownership.
2. Prior Amendments -- The *Standard Lease Amendment* form contemplates that it is the first amendment to the Lease. If prior amendments have been executed, each prior amendment must be referenced.

EXAMPLE:

By a First Amendment dated as of [date of first line of prior amendment], Landlord and Tenant agreed to [extend the term for a period of _____, commencing on _____ and ending on _____] or [reduce/increase the rental rate from \$_____ per square foot to \$_____ per square foot, [reducing/increasing the total annual rent to \$_____] or [reduce/increase the amount of space leased to Tenant from _____ square feet to _____ square feet].

By a Second Amendment, dated as of ...[briefly describe the purpose of the amendment as above].

3. Purpose of Amendment -- The introductory sentences should state the intent of the parties in amending the Lease.

EXAMPLE:

Tenant and Landlord desire to [extend the term of the Lease and/or [increase/decrease the rental rate] and/or [reduce the amount of space leased to Tenant and to make certain improvements to the reduced Premises] and/or [increase the amount of space leased to Tenant,] and to modify certain Lease terms and provisions as provided below.

B. SAMPLE AMENDMENT PROVISIONS

The *Standard Lease Amendment* extends the Lease term at the same rate and gives Tenant an early termination option (this is the most common amendment for state agencies). The following standard provisions should be used for other lease modifications, in combination if more than one change to the Lease is desired:

1. **To increase/decrease the Rent at a flat rate:**

Commencing on [DATE], and continuing for the remainder of the Term, the rental rate is [increased/decreased] from \$_____ per square foot to \$_____ per square foot, resulting in an annual fixed rent of \$_____, payable in equal monthly installments of \$_____ under the same terms and conditions as set forth in Section 3.1 of Lease.

2. **To increase the Rent in stages over a period of months or years:**

During the remainder of Term, the rental rate is as follows:

(b) Effective [DATE] through [DATE], the rental rate shall [increase/decrease] to \$_____ per square foot, resulting in an annual fixed Rent of \$_____, payable in equal monthly installments of \$_____.

(c) Effective [DATE] through [DATE], the rental rate is [increased/decreased] to \$_____ per square foot, resulting in an annual fixed Rent of \$_____ payable in equal monthly installments of \$_____.

3. **To give Tenant an early termination option:**

Tenant may terminate the Lease as amended hereby, without cause, by giving Landlord not less than _____ days prior written notice of such termination [provided, however, that no such termination shall have an effective date prior to {DATE}]. Upon the effective date of such termination, the obligations and liabilities of Landlord and Tenant under the lease shall end (except for those which, under the lease, continue after the expiration of the Term) as if the Lease Term had expired on such date.

4. **To reduce the amount of space leased by Tenant:**

Effective as of [DATE], Tenant and Landlord agree that the Premises consist of _____ square feet.

On or before (or “As of”) [DATE], Tenant shall vacate and surrender (or “has vacated and surrendered”) to Landlord _____ square feet of the Premises currently occupied by Tenant under the Lease, and Landlord shall accept (or “has accepted”) such surrender. The portion of the Premises to be (or “that has been”) surrendered by Tenant and the portion of the Premises that Tenant shall continue (or “continues”) to occupy are shown in the attached Exhibit A.

Tenant shall remove (or “has removed”) all of its personal property and furnishings from the portion of the Premises to be surrendered, and shall fulfill such other obligations under the Lease with respect to the surrendered Premises that would apply if the Lease Term had expired with respect to said space. Subject to the foregoing, after [DATE], Tenant shall have (or “has”) no further obligations to pay Rent or to perform any of its

other obligations under the Lease with respect to the portion of the Premises surrendered to Landlord.

5. **To increase the amount of space leased by tenant and to make improvements in the new space:**

When the Amendment contemplates additional improvements to the Premises, ensure that the description of the Landlord's Improvements is sufficiently detailed to make it clear to all parties what work Landlord has agreed to perform and when Landlord's Improvements will be completed. The following example contemplates minor improvements to the additional space that do not require Landlord to develop, or Tenant to approve, Working Drawings.

Subject to all the terms and conditions of the Lease, except as otherwise provided in this [First, Second, etc., as the case may be] Amendment, Landlord leases to Tenant and Tenant leases from Landlord, those premises on the _____ floor of the Building shown in "Exhibit 1: Landlord's Site Plan and Measured Drawing of Additional Premises," attached hereto, having a Usable Area, as defined in Section 2.2 of the Lease, of _____ square feet (hereinafter called the "Additional Premises").

Upon the Date of Occupancy for Additional Premises (as hereafter defined), the Premises under the Lease shall have a total Usable Area of _____ square feet of office space [and _____ of storage space], as shown on Exhibits A and A-1 to the Lease, and on Exhibit 1 to this [First, Second, etc., as the case may be] Amendment.

The rental rate for the Additional Premises is \$_____ per square foot. Except as otherwise provided in this [First, Second, etc., as the case may be] Amendment, the Rent for the Additional Premises is payable at the same time and on the same terms and conditions as the Rent for the Premises. Commencing on the Date of Occupancy, the total Rent under the Lease is \$_____ per year, payable in equal monthly installments of \$_____.

The obligation of Tenant to pay Rent for the Additional Premises begins on the Date of Occupancy for the Additional Premises, which is the earlier of (a) the date Tenant actually takes possession of the Additional Premises and begins to use the Additional Premises for any or all of the Permitted Uses, or (b) five working days after (i) Landlord substantially completes all of the work listed in "Exhibit 2: Improvements to Additional Premises," attached hereto, with only Punchlist items excepted, and (ii) Landlord provides Tenant with a Certificate of Completion issued by the project architect and a Certificate of Occupancy for the Additional Premises issued by the appropriate municipal authority. All Punchlist Items shall be completed no later than thirty (30) days after Date of Occupancy.

Landlord shall make all of the improvements to the Premises described and depicted in the attached Exhibit 2. Landlord shall complete all such improvements within _____ days after delivery of a fully executed original of this Lease Amendment of Landlord.

All improvements to be made by Landlord shall be (a) furnished and installed at Landlord's sole cost and expense, (b) performed in a manner that does not unreasonably interfere with Tenant's operation in the Premises, (c) done in such a manner as to maintain harmonious labor relations, (d) completed in a good and workmanlike manner in accordance with said Exhibit 2, and in compliance with all applicable laws, ordinances, codes, regulations and any requisite permits.

Landlord shall proceed with and complete said improvements in a timely and diligent manner. From time to time, Landlord shall keep Tenant apprised of the progress of the work to be performed by Landlord. In the event that there is any delay in the progress of the work, Landlord shall notify Tenant of such delay within a reasonable time after Landlord becomes aware of such a delay and shall advise Tenant of all changes or adjustments in the construction schedule, the cause(s), and the corrective efforts, if any, made or to be made by Landlord.

Wherever "Premises" appears in the Lease or in this [First, Second, etc., as the case may be] Amendment, it shall refer to both the current Premises and the Additional Premises, unless otherwise indicated.

C. SIGNATURES

Lease amendments must be executed with the same formalities as the Lease, and the same principles and requirements apply with regard to signatory authority.

D. CONSENT OF LANDLORD'S MORTGAGEES

Before negotiating or finalizing any lease amendment, the file should be checked to see if Tenant has executed a Subordination, Non-Disturbance, and Attornment Agreement (SNDA) with any of Landlord's mortgagees. If there is an SNDA signed by Tenant, then the consent of the mortgagee named in the SNDA must be obtained to any substantive modification of the Lease. The mortgagee can indicate its consent to the terms of the lease amendment by either signing the lease amendment itself, or by providing a letter confirming that it has consented to the lease amendment.

E. EXHIBITS

The *Exhibits* to the *Standard Lease Amendment* must be completed by Landlord.

STANDARD TENANT ESTOPPEL CERTIFICATE

When a landlord borrows money to purchase a building or refinances an existing mortgage, the lender often requires that each tenant provide an Estoppel Certificate containing representations regarding various matters pertaining to its lease and its occupancy of the premises. The *Standard Office Lease* obligates the Commonwealth to provide such a certificate on the standard form developed by DCAM.

The *Standard Tenant Estoppel Certificate* should be completed as follows:

A. LEASE DATA

Complete all blanks on the first page of the Estoppel Certificate. The information must be current and must conform to the terms of the original Lease as it has been amended.

DATE: This must be the date on which the *Standard Tenant Estoppel Certificate* is actually signed by DCAM or by the *Form APL* authorized agency.

LEASE: Include all amendments. If an amendment is currently being negotiated, this must be noted, with a brief explanation of the purpose of the Amendment.

BUILDING: Fill in the square-footage of the Premises and the Premises location data from Section 1.1 of the Lease, as amended.

LEASE TERMS: Note that the “Term Commencement Date” is the Date of Occupancy under the Lease.

B. TENANT’S CERTIFICATIONS

The User Agency must carefully review every representation in the *Standard Tenant Estoppel Certificate*. If any of these representations is not completely true and accurate, *Exhibit A* to the *Standard Tenant Estoppel Certificate* must state how each such representation is not true and accurate. Pay particular attention to the following:

Defaults and Defenses. If an Event of Default has occurred under the lease, or if the User Agency or authorized agency believes that Landlord has failed to perform any of its obligations under the Lease, or if the User Agency or authorized agency has incurred costs for self-help, or has some other offset against the Rent or defense against enforcement of the Lease by the Landlord, these must be stated in *Exhibit A*.

Landlord’s Improvements. All incomplete Punchlist items and defects in work performed by Landlord and known to the User Agency or to the authorize agency must be identified in *Exhibit A*.

If Tenant does not list Landlord defaults, breaches of the Lease by Landlord, incomplete or defective work on Exhibit A, and other exceptions to representations by Tenant in the *Standard Tenant Estoppel Certificate*, Tenant may lose or compromise Tenant’s right to assert claims relating to these matters in the future.

C. CHANGE OF OWNERSHIP

If the Estoppel Certificate is requested because the original Landlord is selling the property, the new owner must provide a Beneficial Interest Disclosure Statement (see *Exhibit E* under *Exhibits* in *Standard Office Lease* section of these instructions) and a Certification of Tax and

Employment Security Compliance (see *Exhibit F* under *Exhibits* in *Standard Office Lease* section of these instructions) **before** rent may be paid to the new owner.

D. SIGNATURES

The Estoppel Certificate must be signed and notarized.

SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

It is customary for a lender holding a mortgage to require existing tenants of the mortgaged property to subordinate their leases to the new mortgage. Like most tenants, the Commonwealth will agree to subordinate its lease to a subsequent mortgage, provided that its tenancy is not disturbed if the lender succeeds to Landlord's interest in the property, and further provided that none of the Commonwealth's rights are impaired by the subordination. The *Standard Office Lease* obligates the Commonwealth to provide a Subordination, Non-Disturbance, and Attornment Agreement ("SNDA") on the standard SNDA form developed by DCAM.

The *Standard Subordination, Non-Disturbance, and Attornment Agreement* should be completed as follows:

On the first page of the SNDA, fill in the blanks as follows:

DATE: Indicate the date the SNDA is actually signed by DCAM or by the *Form – APL* authorized agency.

MORTGAGEE: Indicate the name of the lender.

LANDLORD: Indicate the name of the current Landlord.

TENANT: Indicate the name of the User Agency or the *Form – APL* authorized agency.

REAL PROPERTY: Describe the Premises, as defined and described in the Lease.

LEASE: Indicate the date of the Lease. Note that the "Term Commencement Date" is the Date of Occupancy under the Lease.

COUNTY: Indicate the county in which mortgage is recorded (verify with Mortgagee).

B. ADDRESS FOR NOTICES

In Paragraph 6 of the SNDA, complete the mailing address information for Mortgagee, Tenant (this is the authorized agency's address if *Form – APL* was used), and Landlord.

C. SIGNATURES

The SNDA must be signed and notarized.

D. LEGAL DESCRIPTION

A legal description of the real property on which the Premises are located must be attached as *Exhibit A*.

“HOUSEKEEPING” INSTRUCTIONS FOR LEASING DOCUMENTS

A. DATE OF DOCUMENT

The date of a leasing document must be the actual date on which the Commissioner of DCAM or the authorized signatory of the agency to which leasing authority has been delegated by DCAM executes the document. It is helpful to cover the date blank with a small “Post-It” square on which “leasing will date” or “agency will date” has been written or printed. This will discourage the premature dating of the document by Landlord, Mortgagee, or, where the Commissioner of DCAM is the last signer, by the User Agency. If the document is prematurely or otherwise incorrectly dated for any reason, the date should be corrected to be the actual date on which the Commissioner of DCAM or the authorized signatory of the agency to which leasing authority has been delegated by DCAM executes the document. This can be done either manually or by substitution of a new page on which the date is the only modification that has been made since the document was circulated for signatures (the latter method of correction is preferable because it is neater).

B. SIGNATURES

Other than a *Standard Tenant Estoppel Certificate*, Landlord and, in some instances, Landlord’s Mortgagee, must sign a DCAM standard leasing document. In the DCAM standard leasing documents, Landlord (and Mortgagee, as the case may be) expressly warrants and represents that Landlord’s (or Mortgagee’s, as the case may be) name appears in the document exactly as it appears in Landlord’s record title to the Premises (or in Mortgagee’s record encumbrance of the Premises, as the case may be), if Landlord owns the Premises, or exactly as the name appears in Landlord’s lease for the Premises (or in Mortgagee’s record encumbrance of the leasehold interest, as the case may be), if Landlord is subleasing the Premises to the Commonwealth. Landlord (and Mortgagee, as the case may be) further warrants and represents that the execution of the document is authorized and that each person executing the document for Landlord (or for Mortgagee, as the case may be) is duly authorized to do so and to fully bind Landlord (or Mortgagee, as the case may be) to the document. If Landlord (and/or Mortgagee, as the case may be) is not an individual person or individual persons, Landlord (and/or Mortgagee, as the case may be) warrants and represents that Landlord (and/or Mortgagee, as the case may be) validly and legally exists, is in good standing, and is authorized and qualified to do business in the jurisdiction where the Premises are located. These and other warranties and representations are in Section 5.1 of the *Standard Office Lease* and are also in all DCAM standard leasing documents. (Historical note: Various *Exhibits G* were formerly required for DCAM standard leasing documents, but the inclusion of express warranties and representations within the DCAM standard leasing documents has rendered *Exhibits G* unnecessary and increased the efficiencies of the leasing process.)

C. EXECUTION COUNTERPARTS

Standard Office Lease – Form DPL. Three execution counterparts (one each for DCAM, User Agency, and Landlord) of the *Standard Office Lease*, including the *Rider to Lease* and all *Exhibits*, is first sent by DCAM to Landlord for execution by Landlord of the *Standard Office Lease* and the *Rider to Lease*, and then forwarded by Landlord to the User Agency for execution by the User Agency of the *Standard Office Lease* and the *Rider to Lease*. Upon review and approval of the *Exhibits* supplied by Landlord, and upon Landlord's execution of all three counterparts of the *Standard Office Lease* and the *Rider to Lease*, the User Agency executes all three counterparts of the *Standard Office Lease* and the *Rider to Lease*, and forwards all three counterparts of the *Standard Office Lease*, including the *Rider to Lease* and all *Exhibits*, to DCAM for execution. Upon execution by the DCAM Commissioner, OLSOP retains one fully-executed counterpart and delivers one fully-executed counterpart each to Landlord and User Agency.

Standard Office Lease – Form APL. Three execution counterparts (two for the agency which is authorized by DCAM to procure the lease, and one for Landlord) of the *Standard Office Lease*, including the *Rider to Lease* and all *Exhibits*, is first be sent by the agency which is authorized by DCAM to procure the lease to Landlord for execution by Landlord of the *Standard Office Lease* and the *Rider to Lease*, and then returned by Landlord to the agency for execution by the agency of the *Standard Office Lease* and the *Rider to Lease*. Upon review and approval of the *Exhibits* supplied by Landlord and upon Landlord's execution of all three counterparts of the *Standard Office Lease* and the *Rider to Lease*, the agency executes all three counterparts of the *Standard Office Lease* and the *Rider to Lease*. Upon execution of all three counterparts by the agency, the agency retains two fully-executed counterparts and delivers one fully-executed counterpart to Landlord. **Note: The Standard Office Lease – Form APL Lease is not effective, and an executed counterpart may not be delivered to Landlord, unless and until the DCAM Commissioner has executed Form 3-APL, and a copy of Form 3-APL is attached, immediately following Exhibit F, to the Standard Office Lease – Form APL as Exhibit 3-APL.**

Other Standard Leasing Documents. With certain procedural variations, other DCAM standard leasing documents are similarly prepared in multiple counterparts and similarly circulated for execution. Each fully-executed counterpart of any DCAM standard leasing document is deemed to be an original of the document.

D. LANGUAGE USAGE

DCAM relentlessly seeks to improve its standard leasing documents. Many of these efforts are directed toward improving language usage. The goal is to produce documents that embody clear, concise, contemporary usage of the English language. Archaic “legalese” is eschewed. Here are some examples of those efforts:

A strong emphasis is placed on proper grammar, syntax, punctuation, and style.

There is a decided preference for the active voice (e.g., “the parties must approve any change”) over the passive voice (e.g., “any change must be approved by the parties”).

“Double-quantification” (e.g., “two (2) days”) is unnecessary. The practice originated before Gutenberg’s printing press as an antidote for poor handwriting. With the advent of high-quality printers and copiers, it is feckless. “Single-quantification” (e.g., “two days”) is used.

“Single-quantification” is expressed in words if the expressed quantity is ten or less. “Single-quantification” may be in words or in Arabic numerals if the expressed quantity is greater than ten (e.g., “two days,” “eleven days,” “11 days”).

Words that clutter documents and are commonly referred to as “legalese” (e.g., “whereas,” “heretofore,” “hereunto,” etc.), are avoided.

Long, poorly punctuated, and seemingly interminable sentences are avoided.

“Before” is better than “prior to,” “after” is better than “subsequent to,” and “if” is better than “in the event.”

A plethora of “to-be-avoided” examples could be provided, but it is hoped that these seven bullets are adequate and sufficient to convey the idea of what needs to be done and what needs to be avoided.

Many vestiges of “legalese,” as to word-and-phrase choices, grammar, punctuation, syntax, and style, exist in current DCAM standard leasing forms. For DCAM, this is a work-in-progress, and DCAM shall persist in its reformation efforts. Wherever “legalese” lingers in any DCAM standard leasing document, the goal of DCAM is to purge the “legalese,” to make the documents more comprehensible, and to gracefully bring the documents into the twenty-first century. (Note regarding the immediately preceding sentence: Splitting infinitives is now acceptable if the splitting makes the passage “sound” or “read” better.)

A *Rider to Lease* and a modification of a lease after the execution and delivery of a *Standard Office Lease* tend to be “customized” documents, although standard formats are required and standard instructions are provided. The drafters of such documents must share the goals of DCAM that are described under this item “D. Language Usage.” Examples appear in these instructions under the headings “B. Rider to Lease” and “Modification After Execution and Delivery of Standard Office Lease.”

Highly recommended: *The Elements of Legal Style, Second Edition*, by Bryan A. Garner (Editor in Chief of *Black’s Law Dictionary*), Oxford University Press, 2002.

**COMMONWEALTH OF MASSACHUSETTS STANDARD OFFICE LEASE,
FORM APL**

Delegation of Authority Has Been Suspended

At this time, Pages 4-97 to 4-101 have been deleted

**COMMONWEALTH OF MASSACHUSETTS STANDARD OFFICE LEASE,
FORM DPL**

THIS OFFICIAL FORM MUST NOT BE ALTERED.
ALL MODIFICATIONS MUST BE MADE BY SEPARATE RIDER.

**COMMONWEALTH OF MASSACHUSETTS
OFFICE LEASE**

1. SUBJECT MATTER AND TABLE OF CONTENTS

1.1 Subject Matter

Each of the references in this Lease to any of the following subjects incorporates the data stated for that subject in this § 1.1 and, unless defined elsewhere in this Lease, constitutes the definition of the listed subject.

DATE OF LEASE:

LANDLORD:

ORIGINAL ADDRESS OF LANDLORD:

TENANT:

The Commonwealth of Massachusetts acting by and through its Division of Capital Asset Management and Maintenance ("DCAM") of the Executive Office for Administration and Finance on behalf of the User Agency

ORIGINAL ADDRESS OF TENANT:

Division of Capital Asset Management
One Ashburton Place, 15th Floor
Boston, Massachusetts 02108-1511

TENANT'S REPRESENTATIVE:

Name: _____

Address: _____

and/or such other persons as Tenant designates from time-to-time, as set forth in § 4.4

USER AGENCY:

ORIGINAL ADDRESS OF
USER AGENCY:

BUILDING (ADDRESS):

PREMISES:

Floor(s): _____
Room(s)/Suite: _____
within the Building as shown in Exhibit _____,
together with all of the Landlord's
Improvements (as defined in § 4.1) made within
the Premises pursuant to the provisions of this
Lease.

USABLE AREA OF PREMISES:

Office Space: _____ square feet
Storage Space: _____ square feet

RESERVED PARKING SPACES:

Number: _____
Location: _____

PERMITTED USES:

Subject to the provisions of § 6.1, Tenant must
use the Premises for the following purposes:

INITIAL TERM:

The Initial Term begins on the Date of
Occupancy, as defined in § 3.2, at 12:01 a.m.,
and continues until 11:59 p.m. of the date
immediately preceding the fifth anniversary of
the Date of Occupancy.

“Term” includes the Initial Term and any
extension term (“Extension Term”) unless
otherwise expressly stated. “Expiration Date”
means the last day of the Initial Term or of the
then applicable Extension Term, and includes
any effective date of termination of this Lease,
unless otherwise indicated.

BASE RENT FOR INITIAL TERM:

Year One: \$_____ per year in monthly installments of \$ _____
 \$_____ per square foot for office space
 \$_____ per square foot for storage space
 \$_____ per parking space per year

Year Two: \$_____ per year in monthly installments of \$ _____
 \$_____ per square foot for office space
 \$_____ per square foot for storage space
 \$_____ per parking space per year

Year Three: \$_____ per year in monthly installments of \$ _____
 \$_____ per square foot for office space
 \$_____ per square foot for storage space
 \$_____ per parking space per year

Year Four: \$_____ per year in monthly installments of \$ _____
 \$_____ per square foot for office space
 \$_____ per square foot for storage space
 \$_____ per parking space per year

Year Five: \$_____ per year in monthly installments of \$ _____
 \$_____ per square foot for office space
 \$_____ per square foot for storage space
 \$_____ per parking space per year

1.2 Table Of Contents

1. SUBJECT MATTER AND TABLE OF CONTENTS

1.1 Subject Matter	1
1.2 Table Of Contents	4

2. PREMISES; USABLE AREA

2.1 Premises; Appurtenant Rights	7
2.2 Usable Area	7

3. RENT; DATE OF OCCUPANCY

3.1 Rent Payment	7
3.2 Date of Occupancy; Commencement of Rent Obligation	8
3.3 Tenant's Entry Before Term Without Charge	8

4. IMPROVEMENTS BY LANDLORD

4.1 Landlord's Improvements	9
4.2 Working Drawings	9
4.3 Completion Date; Tenant Delays; Standard for Substantial Completion	10
4.4 Tenant's Representative	13

5. LANDLORD'S COVENANTS

5.1 Ownership; Signatory Authority; Debarment; Pending Proceedings	13
5.2 Delivery of Premises; Compliance with Law	14
5.3 Quiet Enjoyment	14
5.4 Correction of Defective Work; Repair of Premises and Building	15
5.5 Delivery of Services and Utilities	15
5.6 Hazardous Substance	16

6. TENANT'S COVENANTS

6.1 Use of Premises	17
6.2 Care of Premises	17
6.3 Hazardous Substance	18
6.4 Compliance With Applicable Laws and Removal of Liens	18
6.5 Assignment and Subletting	18
6.6 Alterations and Additions	19
6.7 Yield Up at Termination of Lease	21

7. CASUALTY; EMINENT DOMAIN

7.1 Damage by Fire or Other Casualty	21
7.2 Eminent Domain	22

8. INDEMNIFICATION AND INSURANCE

8.1 Indemnification of Tenant by Landlord	23
8.2 Insurance Coverage to be Maintained by Landlord	23
8.3 Tenant's Self-Insurance	24
8.4 Tenant's Personal Property; Assumption of Risk	24

9. DEFAULT

9.1 Event of Default by Tenant	24
9.2 Remedies of Landlord	25

9.3 Cure By Landlord	25
9.4 Event of Default by Landlord	26
9.5 Remedies of Tenant	26
9.6 Cure By Tenant.....	26
9.7 Remedies Cumulative	27
 <u>10. MORTGAGE PROVISIONS</u>	
10.1 Estoppel Certificate.....	27
10.2 Subordination.....	27
 <u>11. HOLDING OVER</u>	
11.1 Holding Over By Tenant.....	27
 <u>12. FISCAL YEAR APPROPRIATIONS AND AUTHORIZATIONS</u>	
12.1 Tenant's Obligations Subject to Appropriations and Authorizations	28
12.2 Termination of Lease for Lack of Appropriations and Authorizations.....	28
 <u>13. PERSONAL LIABILITY</u>	
13.1 Liability of Tenant	28
13.2 Liability of Landlord.....	28
 <u>14. NOTICE</u>	
14.1 Notice.....	29
14.2 Special Notice Where Failure to Reply Results in Consent or Approval	29
 <u>15. FORCE MAJEURE</u>	
15.1 Force Majeure Event.....	30
 <u>16. MISCELLANY</u>	
16.1 Extension	30
16.2 Entire Agreement	30
16.3 Changes in Lease	30
16.4 Binding Agreement.....	30
16.5 Governing Law	30
16.6 Waiver.....	31
16.7 No Broker.....	31
16.8 Rights and Remedies Not Exclusive	31
16.9 Accord and Satisfaction	31
16.10 Debarred Contractors	31
16.11 Time of Essence.....	31
16.12 Non-Discrimination in Employment.....	31
16.13 Severability	32
16.14 Notice of Lease	32
16.15 No Agreement Until Signed.....	32
16.16 State Employees Barred From Interest	32
16.17 Paragraph Headings	32
16.18 Counterparts	32
16.19 Rider, Exhibits, and Other Attached Documents	32

RIDER, EXHIBITS, AND OTHER ATTACHED DOCUMENTS

These are incorporated into and made part of this Lease:

Rider to Lease

- Exhibit A: Plan Showing Location of Premises Within The Building
- Exhibit A-1: Landlord's Measured Drawing of the Premises
- Exhibit A-2: Site Plan Showing Location of Reserved Parking Spaces
- Exhibit B: Schematic Space Plan of the Premises
- Exhibit C: Specifications for Premises (As appearing in the Request for Proposals, as revised by agreement of the parties based on Landlord's Proposal and subsequent negotiations)
- Exhibit D: Construction Schedule

Landlord's Beneficial-Interest-Disclosure Statement

Certificate of Tax-and-Employment-Security Compliance

2. PREMISES; USABLE AREA

2.1 Premises; Appurtenant Rights

Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord.

As appurtenant to the Premises, Tenant, in common with other tenants of the Building (and subject to the rules of the Building, as set forth in § 6.4), has the right to use: (i) the common lobbies, malls, corridors, stairways, elevators, service areas, and loading platform of the Building; (ii) the pipes, ducts, conduits, wires, and appurtenant meters and equipment serving the Premises in common with other premises within the Building; (iii) common pedestrian walkways and landscaped areas; (iv) if the Premises include less than the entire floor area of any floor of the Building, the common restrooms, corridors, and elevator lobbies located on such floor and serving the Premises; and (v) all other areas in or about the Building from time-to-time intended for general use by Tenant and other tenants of the Building.

2.2 Usable Area

For the purposes of this Lease, "Usable Area" means, with respect to the Premises or any space removed from or added to the Premises, the square footage determined by measuring the entire floor area of the Premises (or such other space) bounded by a line established by the predominant inside finish of the permanent outside Building walls that abuts the floor (not from the inside face of the windows) and by the interior surface of corridor walls or other demising walls. Deductions are not made for columns or other projections necessary to the Building structure or systems or for partitions subdividing the Premises. Notwithstanding the foregoing, under no circumstances does the Usable Area include elevator shafts, vestibules, stair enclosures, elevator-machine rooms or other building-equipment areas, janitorial, electrical, or mechanical closets, loading platforms, or restrooms, irrespective of whether Tenant occupies the entire floor or the entire Building.

Landlord acknowledges that Tenant has relied upon Exhibit A-1 in establishing the Usable Area and that Rent is predicated upon the Premises having a Usable Area equal to or exceeding the Usable Area of the Premises set forth in § 1.1. Landlord warrants and represents to Tenant that Exhibit A-1 is complete and accurate in all respects. If it is determined that Exhibit A-1 is not accurate and that the Usable Area of the Premises is smaller than depicted in Exhibit A-1 by a factor of 1% or more, then, at the option of Tenant, Landlord and Tenant must modify this Lease to state the actual Usable Area of the Premises and to adjust Rent downward to reflect the actual Usable Area.

3. RENT; DATE OF OCCUPANCY

3.1 Rent Payment

Tenant agrees to pay, and Landlord agrees to accept, Rent described in § 1.1. Equal monthly installments of Rent are payable on or before the tenth day of the calendar month for which Rent is due. If the Initial Term commences other than on the first day of a calendar month or ends other than on the last day of a calendar month, Rent for such fractional month is prorated. Notwithstanding the second sentence of this paragraph, if the Initial Term commences other than on the first day of a calendar month, Tenant pays the prorated Rent for such partial calendar month concurrently with the payment of the installment for the first full calendar month of the Initial Term.

If any installment of Rent is not paid when due, Landlord is entitled to late-payment interest on the overdue amount in accordance with and subject to G. L. c. 29, § 29C, and any regulations or administrative bulletins promulgated under said statute.

3.2 Date of Occupancy; Commencement of Rent Obligation

The obligation of Tenant to pay Rent begins on the Date of Occupancy. The Date of Occupancy is the earlier of (a) the 15th day after the Premises are available for Tenant's occupancy, or (b) the day Tenant actually takes possession of the Premises and begins to use the Premises for any or all of the Permitted Uses. The Premises are deemed available for Tenant's occupancy only when (i) Landlord substantially completes all of the Landlord's Improvements (as defined in § 4.1) in accordance with the provisions of this Lease, with only Punchlist Items (as defined in § 4.3) excepted, (ii) Landlord provides Tenant with a copy of a Certificate of Completion issued by the project architect confirming that the Landlord's Improvements are substantially completed in accordance with the Working Drawings approved by Tenant, (iii) Landlord provides Tenant with a copy of the Certificate of Occupancy for the Premises issued by the appropriate municipal authority, (iv) Landlord provides Tenant with a written certification of a registered engineer certifying that the Building HVAC system, as designed and constructed, satisfies the requirements of Exhibit C and that the air distribution system serving the Premises is properly balanced in accordance with the design intent, as set forth in Exhibit C and the Working Drawings, and (v) Landlord provides Tenant with the certificates of insurance that are required by § 8.2.

Notwithstanding that Landlord meets all of the requirements set forth in the preceding paragraph for establishing the Date of Occupancy, the Date of Occupancy is not deemed to occur before the Completion Date set forth in § 4.3 unless Tenant actually takes possession of the Premises and begins to use the Premises for any or all of the Permitted Uses before the Completion Date. Tenant agrees to execute a letter to Landlord confirming the Date of Occupancy within ten business days after the Date of Occupancy has occurred. Unless otherwise provided by this Lease, "business day" means any day *other than* Saturday, Sunday, or a designated holiday of the Commonwealth of Massachusetts on which the offices of the Commonwealth of Massachusetts are closed, whether throughout the Commonwealth of Massachusetts or only in Suffolk County.

3.3 Tenant's Entry Before Term Without Charge

With the prior approval of Landlord, Tenant may enter the Building and Premises before the Date of Occupancy without payment of any additional sums in order to install telephone equipment, cabling, furniture, and fixtures, and otherwise to prepare the Premises for occupancy by Tenant. Landlord must not withhold or delay such approval, provided that Tenant coordinates Tenant's work with the construction of the Landlord's Improvements and any other work being performed by Landlord in the Building so as not to interfere with or increase the cost of such work of Landlord or delay the Completion Date. As a condition of granting such approval, Landlord has the right to require that a representative of Landlord accompany Tenant and Tenant's contractors, and Tenant agrees, on behalf of Tenant and Tenant's contractors, to comply with any and all reasonable directions given by said representative of Landlord.

In order to assist Tenant with Tenant's preparation, move into, and occupancy of the Premises, Landlord must provide Tenant and Tenant's agents and contractors with all information concerning the Building's structure, systems, utilities, equipment, and services that Tenant

reasonably requests. Landlord must provide such information with reasonable promptness, whether before or after commencement of the Term.

4. IMPROVEMENTS BY LANDLORD

4.1 Landlord's Improvements

Landlord, at Landlord's sole cost and expense (except as otherwise specifically provided in this Lease), furnishes all labor and materials necessary to construct the Premises and to make any and all improvements or alterations to the Building and exterior areas that the Schematic Space Plan attached as Exhibit B, the Specifications for the Premises attached as Exhibit C, and all other provisions of this Lease require. All alterations and improvements that Landlord makes in or about the Premises are the "Landlord's Improvements."

4.2 Working Drawings

Landlord must cause to be prepared, at Landlord's sole cost and expense, working drawings (the "Working Drawings") for all of the Landlord's Improvements that fix and describe the location, dimensions, and character of the Landlord's Improvements, and conform in all respects to Exhibit B, Exhibit C, and all other provisions of this Lease. Without limiting the foregoing, each of the requirements designated "[x]" applies to the Working Drawings:

- [] An architect licensed in the Commonwealth of Massachusetts, as the applicable code requires or the applicable codes require, must prepare and stamp the Working Drawings.

The Working Drawings must specifically include, at a minimum:

- [] Floor plans indicating room and corridor locations, column locations, partition layout, door and window locations, and structural modifications.
- [] Electrical and telephone/data cabling plans indicating all panels, devices, and power and telephone/data outlets, and showing locations with reference to walls, closets, columns, and User Agency's systems furniture, telephone system, servers, and photocopiers.
- [] Reflected ceiling plans indicating lighting, HVAC supply and return grilles, and fire-protection devices.
- [] HVAC plans indicating size and location of all equipment, piping, ductwork, supply and return grilles, convectors, and radiators.
- [] Finish schedules and legend of materials, abbreviations, and symbols.
- [] Fire-protection plans.
- [] Plumbing plans.
- [] Furniture plans indicating the User Agency's systems furniture with sufficient detail to enable identification of primary and secondary egress corridors.

The Working Drawings are subject to the prior written approval of Tenant. Within _____ weeks after Tenant delivers a fully executed copy of this Lease to Landlord, Landlord must submit the Working Drawings to Tenant with a transmittal letter (i) identifying the Premises and the User Agency, (ii) listing each document included in the Working Drawings that Landlord submits, and (iii) requesting Tenant's approval of the Working Drawings. Within ten business days after receipt of the Working Drawings, Tenant must either approve the Working Drawings in writing or notify Landlord in writing of disapproval, specifying in what respects the Working Drawings are not in conformity with the requirements of this Lease. If Tenant fails to notify Landlord of disapproval within said time period, Tenant must be deemed to have approved the Working Drawings.

If Tenant disapproves the Working Drawings, Landlord, within ten business days after notice of disapproval is given, must submit new or corrected Working Drawings to Tenant. Any resubmission is subject to Tenant's review and approval in accordance with the procedure provided in this § 4.2 for an original submission until Tenant fully approves the Working Drawings. Upon Tenant's written full approval of the Working Drawings, the Working Drawings are deemed incorporated into and made a part of this Lease for all purposes.

At all times, the Working Drawings must conform to good design practice, the requirements of Exhibits B and C, and all other provisions of this Lease. Without limiting the foregoing, Landlord must not make any change in the Working Drawings after Tenant approves the Working Drawings that in any manner reduces the utility, lowers the quality, or affects the appearance of all or any part of the Landlord's Improvements, increases Tenant's cost to use and occupy the Premises, or interferes with Tenant's ability to use and occupy the Premises. Landlord must submit any proposed change in the Working Drawings to Tenant at least three business days before implementing such change. Any material change in the Working Drawings requires Tenant's written approval, which approval is given only if the Working Drawings, as changed, remain in conformity with Exhibits B and C, good design practice, and all other provisions of this Lease. Landlord requests, and Tenant approves, any proposed change in the Working Drawings in accordance with the procedure provided in this § 4.2 for an original submission.

Notwithstanding any other provision of this Lease, if Tenant requests any change to the Working Drawings or to the Landlord's Improvements that causes an increase in Rent or requires Tenant to pay any additional sum to Landlord or to Landlord's contractors, Landlord must not make such change, and Tenant has no liability for any cost that Landlord or any other party incurs in connection with such change, unless and until Landlord and Tenant execute a written modification of this Lease, specifying such change and the additional rent or other payment that Tenant must make.

It is understood and agreed that Landlord and Landlord's architects and engineers are fully and completely responsible for all aspects of the design, engineering, and construction of the Landlord's Improvements. No comments on or approval by Tenant of the Working Drawings or any other advice or opinions provided by Tenant concerning the design or construction of the Landlord's Improvements renders Tenant responsible for the design, engineering, or construction of the Landlord's Improvements, or invests Tenant with any responsibility for defects or other Building conditions.

4.3 Completion Date; Tenant Delays; Standard for Substantial Completion

Subject to Tenant Delays and any Force Majeure Event, Landlord must substantially complete all of the Landlord's Improvements and make the Premises available for Tenant's occupancy within

_____ weeks after delivery of a fully executed copy of this Lease to Landlord (the "Completion Date"). If, at any time, it appears that this deadline will not be met, Landlord must notify Tenant immediately, in writing. Such notice must advise Tenant of each reason for delay and of the new projected Completion Date.

If a Force Majeure Event delays the Completion Date, then the Completion Date, as modified from time to time, must be extended by the actual number of days that a Force Majeure Event delays the Completion Date, but in no event can such extension of the Completion Date for Force Majeure Events exceed 150 days in the aggregate without Tenant's written consent, which Tenant has the right to withhold for any reason or for no reason, in Tenant's sole discretion.

If the Completion Date is delayed due to a Tenant Delay, then the Completion Date, as extended from time to time, must be extended by the actual number of days that such Tenant Delay delays the Completion Date. For the purposes of this Lease, "Tenant Delay" means any delay in the Completion Date that is directly and primarily caused by any of the following acts or omissions of Tenant, provided such act or omission continues for a period of more than two business days after receipt of notice from Landlord that such act or omission is likely to cause a delay in the Completion Date:

- (a) Tenant's request for special work not included in the Working Drawings that Tenant previously approved or that this Lease otherwise requires; or
- (b) Tenant's request for a change in the Working Drawings that Tenant previously approved; or
- (c) Delays in the delivery, installation, or completion of any work that Tenant or Tenant's contractors perform; or
- (d) Any failure by Tenant to perform any of Tenant's obligations under this Lease.

Such notice must be sent to Tenant in an envelope bearing the following notice printed in bold-face all-uppercase type at least one-quarter inch high (28-point font):

NOTICE OF TENANT DELAY — OPEN IMMEDIATELY

The extension of the Completion Date for Tenant Delays is Landlord's sole and exclusive remedy for Tenant Delays, notwithstanding the provisions of § 16.8 or any other provision of this Lease.

The Landlord's Improvements are substantially complete for the purposes of this Lease only when (i) Landlord performs the work in the Working Drawings approved by Tenant that Landlord is required to perform, including complete installation of all structural and mechanical elements, walls, partitions, windows, floor and ceiling coverings, wiring, fixtures, life-safety systems, decorations, paint, and exterior improvements, with only Punchlist Items excepted, (ii) Landlord makes the water supply, sewage, heating, ventilating, air conditioning, and electric facilities available to Tenant in accordance with the obligations that Landlord assumes under this Lease, and (iii) Landlord has caused the Premises to be free of debris and construction materials, in a usable and tenantable condition, and cleaned.

Subject to Tenant Delays and Force Majeure Events only, Landlord must cause the Landlord's Improvements to be completed in accordance with the Construction Schedule annexed as Exhibit D. Landlord must keep Tenant apprised of the progress of the work that Landlord performs under this Lease. If there is any delay in the progress of the work of five days or more, Landlord must notify Tenant of such delay immediately, regardless of whether Landlord anticipates that such delay causes a delay in the Completion Date. Said notice must advise Tenant of all changes or adjustments in the Construction Schedule, the cause of each change or adjustment, and the corrective efforts, if any, that Landlord has made, proposes to make, or both.

If, for reasons other than Tenant Delays or a Force Majeure Event, Landlord does not substantially complete the Landlord's Improvements and make the Premises available for Tenant's occupancy by the Completion Date, as extended, and, notwithstanding Tenant's termination of this Lease as provided in this § 4.3, Landlord must pay to Tenant any and all costs, fees, and expenses that Tenant incurs as a result of such delay, including, without limitation, necessary additional moving and storage costs, expenses incurred to find other temporary space, and any cost difference between Tenant's rental rate under this Lease and the rent that Tenant incurs during the period of delay by Landlord.

If the Landlord's Improvements are not substantially completed within 60 days after the Completion Date, as extended for Tenant Delays, a Force Majeure Event, or otherwise by agreement of Landlord and Tenant, Tenant has, in addition to any other remedies available to Tenant under this Lease, at law, or in equity, the right to terminate this Lease by giving Landlord a written Notice of Termination, which option Tenant has the right to exercise immediately or at any time after the expiration of said 60 days and without further notice. Such termination of this Lease by Tenant does not relieve Landlord of Landlord's obligation to pay Tenant any and all costs, fees, and expenses that Tenant incurs as a result of Landlord's delay in making the Premises available for occupancy by Tenant, as provided in the preceding paragraph, and such termination does not limit any claim for damages to which Tenant is lawfully entitled by reason of Landlord's failure to perform Landlord's obligations.

Notwithstanding Tenant's consent to any extension of the Completion Date, Landlord must promptly complete all Punchlist Items, and in every event, Landlord must complete Punchlist Items no later than 30 days after the Date of Occupancy. For the purposes of this Lease, "Punchlist Items" means only minor and insubstantial details of decoration or mechanical adjustment that do not impair Tenant's ability to use and occupy the Premises in accordance with the provisions of this Lease. On or before the Date of Occupancy, Landlord and Tenant must conduct a walk-through of the Premises and must identify, in writing, all Punchlist Items that Landlord must complete.

The construction of the Landlord's Improvements must be (i) coordinated with any work being performed by Tenant, provided that such coordination does not materially interfere with Landlord's construction schedule, delay the Completion Date, or increase the cost of the Landlord's Improvements, (ii) completed in accordance with the approved Working Drawings and in a good and workmanlike manner, (iii) performed and completed in compliance with all applicable laws, ordinances, codes, and regulations, and (iv) performed and completed at Landlord's sole expense, including the cost of all design work, materials, labor, and state and local permits. Approval by Tenant of any Working Drawings or changes in Working Drawings, whether expressly given or resulting from Tenant's inaction, must never be construed as a waiver of any of the requirements of this paragraph.

4.4 Tenant's Representative

Tenant designates the individual(s) named in § 1.1 as Tenant's Representative, with full power and authority to make decisions on behalf of Tenant with respect to matters pertaining to the design and construction of the Landlord's Improvements, except that Tenant's Representative has no authority whatsoever to alter, waive, or modify any provision of this Lease, which must only be done in accordance with the provisions of § 16.3. Landlord must deliver the Working Drawings and any requests for changes or modifications to the Working Drawings to Tenant's Representative. Tenant's Representative or his/her successor must communicate to Landlord, in writing, Tenant's approval or disapproval of the Working Drawings and all other decisions relating to the Landlord's Improvements, and Landlord must rely only upon written communications received from such individuals unless Tenant otherwise notifies Landlord in writing.

5. LANDLORD'S COVENANTS

5.1 Ownership; Signatory Authority; Debarment; Pending Proceedings

Landlord warrants and represents as follows:

- (a) Landlord has record title to the premises (or if this Lease is a sublease, Landlord warrants and represents that Landlord holds a current and valid lease of the premises) of which the Premises are a part, and that there are no encumbrances affecting the Premises or Building that would prohibit or interfere with the construction of the Landlord's Improvements or the use of the Premises for the Permitted Uses (or the sublease of the Premises if this Lease is a sublease).
- (b) Landlord's name appears in this Lease exactly as Landlord's name appears on Landlord's record title to the Premises if Landlord owns the Premises, or exactly as Landlord's name appears in Landlord's lease if this Lease is a sublease.
- (c) Landlord has full legal capacity to enter into this Lease.
- (d) If Landlord is not a natural person or natural persons, but Landlord is, rather, a so-called "creature of the law" (e.g., a corporation, a general or limited partnership, a trust, a limited liability company, etc.), Landlord is validly organized and existing, Landlord is in good standing in the state, commonwealth, province, territory, or jurisdiction of Landlord's organization, and Landlord is authorized and qualified to do business in the state, commonwealth, province, territory, or jurisdiction in which the Premises are located.
- (e) The execution of this Lease is duly authorized, and each person executing this Lease on behalf of Landlord has full authority to do so and to fully bind Landlord.
- (f) Landlord is not debarred or suspended from contracting with the Commonwealth of Massachusetts under any applicable debarment statute or regulation.
- (g) Landlord knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law-enforcement agency against or affecting Landlord or Landlord's properties wherein any unfavorable decision,

ruling, or finding would materially and adversely affect the validity or enforceability of this Lease or Landlord's ability to carry out Landlord's obligations.

5.2 Delivery of Premises; Compliance with Law

Landlord warrants and represents that Landlord must deliver the Premises to Tenant in good, clean, and rentable condition, and otherwise in accordance with the provisions of this Lease, and that the construction of the Landlord's Improvements and Building common areas to which Tenant has appurtenant rights, and the use of the Premises by Tenant for the Permitted Uses must be in full compliance with (i) all applicable overleases, (ii) all requirements of Landlord's mortgages and insurance policies, (iii) all laws, ordinances, codes, and regulations (including, without limitation, those pertaining to handicapped accessibility) of governmental authorities with jurisdiction, and (iv) all regulations of the Board of Fire Underwriters or any similar insurance-rating body or bodies.

If, at any time, any governmental authority with jurisdiction or the Board of Fire Underwriters or any similar insurance-rating body notifies Landlord or Tenant that all or any part of the Premises or Building is not constructed or maintained in compliance with any applicable law, ordinance, code, or regulation, and demands compliance, then Landlord, upon receipt of such notification, promptly must cause such repairs, alterations, or other work to be done so as to bring about the compliance demanded. Landlord has the right to defer compliance so long as Landlord contests the validity of any such law, order, or regulation in good faith and by appropriate legal proceedings, provided that such failure to comply must not in any way interfere with Tenant's use of the Premises for the Permitted Uses, subject Tenant or Tenant's employees or invitees to any increased risk of injury to their persons or property, adversely affect any other right of Tenant under this Lease, or impose any additional obligation upon Tenant.

5.3 Quiet Enjoyment

Landlord warrants and covenants that as long as there is no Event of Default (as defined in § 9.1) by Tenant under this Lease, Tenant must have peaceful and quiet use and possession of the Premises without hindrance or interruption on the part of Landlord or any other person for whose actions Landlord is legally responsible, or by any person claiming by, through, or under Landlord.

At reasonable times and without unreasonably interfering with Tenant's use, occupancy, and enjoyment of the Premises, Landlord and Landlord's agents have the right to enter the Premises to make repairs or to view the Premises. Landlord must give Tenant a minimum of 48-hours' notice for such visits (Landlord has the right to give such notice by telecopier (fax) in the case of minor repairs taking one day or less to complete, or in the case of viewing the Premises); provided, however, that Landlord has the right to enter the Premises at any hour and without 48-hours' notice in the case of an emergency affecting the Premises.

Landlord has the right to enter for the purpose of showing the Premises to prospective tenants only during the last six months of the Term. Landlord must notify Tenant (Landlord has the right to give such notice by telecopier (fax)) at least 24 hours before showing the Premises to prospective purchasers, tenants, or other parties.

5.4 Correction of Defective Work; Repair of Premises and Building

During the Term, Landlord must promptly remedy, repair, or replace any defective aspects of the Landlord's Improvements of which Landlord becomes aware after the Date of Occupancy ("Latent Defects").

Subject to Landlord's obligation to correct Latent Defects, Landlord must keep and maintain the Premises, including, without limitation, all equipment and fixtures that Landlord furnishes as part of the Landlord's Improvements (whether located within or outside of the Premises) in such good repair, order, and condition as the same are in at the beginning of the Term, reasonable wear and tear, damage that fire or other casualty causes (except as provided in § 7.1), and damage that Tenant's negligence, Tenant's breach of this Lease, or Tenant's willful misuse causes excepted. Without limiting the foregoing, but subject to any additional or limiting provisions of Exhibit C, Landlord's obligations include repair of broken glass, doors, floor coverings, interior walls and partitions, ceiling tiles, plumbing and lighting fixtures, locks, fire protection equipment, heating, ventilation, and air conditioning equipment, and cabling. Landlord must make such repairs to the roof, foundation, exterior walls, floor slabs, and common areas and facilities of the Building, including finishes, as are necessary to keep them in good condition.

Landlord must make routine repairs to the Premises or to any of the Landlord's Improvements outside of the Premises within five business days after Landlord discovers or Tenant notifies Landlord of the condition requiring repair, or within such shorter time period as applicable law, code, or regulation requires. "Routine repairs" means any repair that is not an "emergency repair," as defined in the next paragraph.

Landlord must make emergency repairs to the Premises, to the Landlord's Improvements, or to any other portion of the Building immediately upon notice to Landlord or to Landlord's authorized representative of the condition requiring repair. As used herein, "emergency repair" means any repair or replacement that is required to remove an immediate threat to the life, health, or safety of persons or property upon the Premises or the appurtenant areas described in § 2.1.

Landlord must complete all repairs (i) at Landlord's sole cost and expense, except as provided by this § 5.4, (ii) in a good and workmanlike manner, (iii) with respect to repairs of the Premises and the Landlord's Improvements only, with materials of equal or better quality than the original, and (iv) in compliance with all applicable laws, ordinances, codes, and regulations.

In (i) scheduling and carrying out the repairs that this Lease requires, (ii) making any optional repairs, alterations, or improvements to the Building or Premises, and (iii) performing routine maintenance of Building systems, fixtures, or equipment, Landlord must make all reasonable efforts to minimize interference with Tenant's access to and use of the Premises. If any such repairs or maintenance by Landlord causes Tenant to be deprived of the use or quiet enjoyment of all or a material portion of the Premises for a period of more than two consecutive business days, Rent for each succeeding day must be abated in proportion to the deprivation unless said repairs or maintenance are required due to damage caused by the negligence, breach of this Lease, or willful misconduct of Tenant or Tenant's agents or contractors.

5.5 Delivery of Services and Utilities

Landlord must furnish janitorial and other services, utilities, facilities, and supplies, as set forth in Exhibit C.

5.6 Hazardous Substance

Landlord represents that Landlord has no knowledge of, and has not received any notice of, the current or past existence of any material, currently considered to be a Hazardous Substance, that is existing, deposited, or discharged on or from, or transported to, from, or across, or migrating toward or across the Premises. For purposes of this Lease, Hazardous Substance means (i) any “hazardous substance,” “hazardous material,” “toxic substance,” “hazardous waste,” “hazardous pollutant” or “toxic pollutant,” oil, asbestos, urea formaldehyde foam insulation, or “solid waste,” as presently defined or otherwise denominated as hazardous, toxic, or a pollutant or a special waste in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as modified from time to time (42 U.S.C. 9601 *et seq.*) (“CERCLA”), the regulations promulgated under CERCLA, and the Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*); (ii) any additional substance or material that is incorporated in or added to the definition of “hazardous substance” for the purposes of such laws; (iii) a substance listed in the United States Department of Transportation Table (49 CFR 172.101, as modified) or by the Environmental Protection Agency (or any successor agency) as a hazardous substance (40 CFR Part 302, as modified); (iv) any hazardous waste or solid waste, as defined in the Resource Conservation and Recovery Act of 1976, as modified by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C.A. 6901 *et seq.*); (v) any material, waste, or substance that is (A) petroleum, (B) asbestos or an asbestos-containing material, (C) polychlorinated biphenyls, (D) urea-formaldehyde (“UFFI”) or UFFI-containing material, (E) radon, (F) designated as a “hazardous substance” pursuant to § 311 of the Clean Water Act (33 U.S.C. 1251 *et seq.*), or listed pursuant to § 307 of the Clean Water Act (33 U.S.C. 1317); (G) flammable explosive; or (F) radioactive material; and (vi) any additional substance or material that is considered to be a “hazardous substance,” “hazardous material,” “toxic substance,” “hazardous waste,” “solid waste,” or regulated substance or material (including, without limitation, any asbestos-containing material) under any state, federal, or local law, rule, or regulation governing health, safety, natural resources, or the environment relating to the Premises, including, without limitation, G. L. c. 21E (being the Massachusetts Oil and Hazardous Materials Release and Prevention Act) and the definitions of oil and/or hazardous material promulgated thereunder, G. L. c. 21C, Title 5 of the State Environmental Code, G. L. c. 111, 150A, and any hazardous and inflammable substance regulated under G. L. c. 148. Each reference in this Lease to law, a rule, a regulation, etc., whether specific or general, is to law, a rule, a regulation, etc., that is currently in effect, as modified or supplemented.

Landlord agrees that Landlord must not cause or permit any Hazardous Substance to be used, generated, stored, or disposed of on, under, or about, or transported to, from, or across the Premises, or to migrate toward the Premises, provided, however, that this does not (i) prohibit Landlord from permitting other tenants of the Building from using any Hazardous Substance subject to the same provisions that are applicable to Tenant, or (ii) prohibit Landlord and Landlord’s contractors from using necessary amounts of cleaning fluids, pesticides, gasoline, solvents, or similar supplies necessary to carry out Landlord’s construction, repair, and maintenance obligations under this Lease, any of which constitutes a Hazardous Substance, provided that such use, including storage and disposal, by Landlord is in compliance with the manufacturers’ instructions and recommendations for the safe use of such products, and with all laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment, safety, or any Hazardous Substance.

Landlord must promptly take or cause others to take all actions that are necessary to assess, remove, and/or remediate each Hazardous Substance that is on, under, or migrating toward the

Premises or Building (unless generated by Tenant), as and to the extent required by all laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment or any Hazardous Substance. Landlord must also take all actions required to prevent such Hazardous Substance from causing injury or damage to Tenant and Tenant's employees, agents, contractors, and invitees, or if injury or damage cannot be prevented, to minimize such injury or damage to the greatest extent possible.

Landlord must indemnify, save harmless, and defend, under the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with G. L. c. 12, § 3, Tenant from all liability, claim, or cost (including reasonable costs of legal counsel and response costs as defined under CERCLA) resulting directly or indirectly from any Hazardous Substance (i) on or under the Premises or the Building before the Date of Occupancy, or (ii) after such date with respect to any Hazardous Substance that Landlord, Landlord's employees, agents, independent contractors, or invitees (that include, for the purposes of this § 5.6, any other tenant of the Building, but only if Landlord knowingly permits such tenant to carry out activities involving a Hazardous Substance in breach of Landlord's obligations in this § 5.6) release(s) or place(s) on or under the Premises or the Building. This indemnity survives termination of this Lease. Promptly upon discovery, Tenant must notify Landlord in writing of any facts or circumstances that give rise to any claim by Tenant.

6. TENANT'S COVENANTS

6.1 Use of Premises

Tenant must use the Premises only for the Permitted Uses set forth in § 1.1, provided, however, that Tenant has the right to use the Premises for other purposes if such use (i) is compatible with the other uses of the Building, (ii) does not materially increase the amount of visitor or employee traffic to and from the Premises, (iii) does not materially increase Landlord's cost to provide the services (including, without limitation, repairs and maintenance of the Premises and Building) that this Lease requires or any other services currently provided to tenants of the Building, and (iv) is otherwise compatible with all other obligations of Tenant under this Lease.

Tenant must not cause or permit any nuisance in the Building and must not conduct any activity within the Premises or Building that interferes with the rights of other tenants or occupants of the Building.

Tenant covenants and agrees that Tenant must not do or permit anything to be done in or upon the Premises or Building, or bring anything on the Premises or Building that increases the rate of insurance on the Premises or Building above the standard rate applicable to Premises occupied for the Permitted Uses, or that voids such insurance. Tenant further agrees that if Tenant does any of the foregoing, Tenant must promptly pay to Landlord, on demand, any resulting increase as additional rent, or Tenant must cease all activities that cause the increase or the voiding.

6.2 Care of Premises

Tenant must not injure, deface, or commit waste in the Premises or any part of the Building. Tenant must exercise reasonable care to ensure that all systems, fixtures, and equipment that Landlord installs are used only for their respective intended purposes and that the electrical, mechanical, and structural systems of the Building and the Premises are not overloaded. Tenant

must notify Landlord promptly of any damage to the Premises, malfunction of a system or fixture, or any other condition that requires repair by Landlord.

6.3 Hazardous Substance

Tenant agrees that Tenant must not cause or permit any Hazardous Substance to be used, generated, stored, or disposed of on, under, or about the Premises, or to be transported to, from, or across the Premises.

Nothing in this Lease prohibits Tenant from using minimal quantities of cleaning fluid and office or household supplies that constitute(s) a Hazardous Substance but are customarily present in and about premises used for the Permitted Uses, provided that Tenant's use, including storage and disposal of such cleaning fluid and office or household supplies, is in compliance with all applicable laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment or any Hazardous Substance.

If Tenant or Tenant's employees, agents, independent contractors, or invitees cause(s) the release or threatened release of any Hazardous Substance from the Premises, Tenant must promptly notify Landlord and, without cost to Landlord, take such action, or cause others to take such action, as is necessary to assess, remediate, or remove any Hazardous Substance, as and to the extent required by all applicable laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment or any Hazardous Substance.

6.4 Compliance With Applicable Laws and Removal of Liens

Tenant must comply with all laws, orders, and regulations of federal, state, county, and city authorities, and with any of Landlord's rules and regulations that are set forth in this Lease or that Landlord establishes, provided that they do not conflict with the provisions of this Lease, and further provided that they are delivered to Tenant and to the User Agency in the manner required for notices. Tenant has the right to defer compliance so long as Tenant contests in good faith the validity of any such law, order, or regulation by appropriate legal proceedings and first gives Landlord appropriate assurance, reasonably satisfactory to Landlord, against any loss, cost, or expense on account of such deferral, and provided that such contest must not subject Landlord to criminal penalties or civil sanctions, loss of property, liens against property, or civil liability. Tenant must not cause or allow any liens of any kind to be filed against the Premises. If any liens are filed, within 15 days after receiving written notice of such filing, Tenant, at Tenant's sole cost and expense, must take whatever action is necessary to cause such lien to be bonded off or released of record without cost to Landlord.

6.5 Assignment and Subletting

Tenant must not assign, sublet, mortgage, pledge, or encumber this Lease (the result of any such action being referred to as a "Transfer") without Landlord's prior written consent, which Landlord must not unreasonably withhold, condition, or delay. Without limiting the foregoing, Landlord and Tenant agree that Landlord has the right to withhold Landlord's consent to any proposed Transfer to a transferee who, by reputation, financial strength, or expected use, is not compatible with the other tenants in the Building, or whom Landlord, in Landlord's reasonable business judgment, does not deem to be an acceptable credit risk. By valid written instrument, any transferee must expressly assume, for the transferee and the transferee's successors and assigns,

and for the benefit of Landlord, all of the obligations of Tenant under this Lease. Following such transfer, Tenant has no further obligations of Tenant under this Lease.

Any request by Tenant for Landlord's consent to a Transfer must include (i) the name of the proposed transferee; (ii) the nature of the transferee's business and proposed use of the Premises; (iii) complete information as to the financial conditions and standing of the proposed transferee; and (iv) the provisions of the proposed Transfer. Tenant must promptly supply such additional information about the proposed Transfer and transferee as Landlord reasonably requests. Landlord also has the right to meet and interview the proposed transferee.

Landlord must advise Tenant in writing whether or not Landlord consents to a proposed Transfer within 30 days of receiving Tenant's request for such consent. If such consent is withheld, Landlord must specify the reasons, in writing, to Tenant. If Landlord fails to so notify Tenant within said time period, Landlord is deemed to have given Landlord's consent to the proposed Transfer.

The express or implied consent by Landlord to any Transfer does not constitute a waiver of Landlord's right to prohibit any subsequent Transfer.

As used in this Lease, "assign" or "assignment" includes, without limitation, any transfer of Tenant's interest in the Lease by operation of law.

Notwithstanding any contrary provisions of this § 6.5, in connection with any proposed Transfer, Landlord has an option to cancel and terminate this Lease if Tenant's request is to assign the Lease or to sublet more than 80% of the Premises; or, if Tenant's request is to sublet a portion of the Premises only, to cancel and terminate this Lease with respect to such portion of the Premises for the proposed duration of the sublease. Landlord must exercise this option in writing within 30 days of receiving Tenant's request for Landlord's consent to a proposed Transfer, and in each case, such cancellation or termination must occur as of the effective date of the proposed Transfer. In such event, Tenant must permit Landlord to enter into a direct lease with the proposed transferee.

Landlord acknowledges and agrees that the use or occupation of all or part of the Premises by an agency of state government other than the User Agency named in § 1.1, or the substitution of another agency of state government for the User Agency named in § 1.1, is not a Transfer, provided that the Premises continue to be used for the Permitted Uses. Nevertheless, Tenant must advise Landlord, in writing, if any agency of state government other than the User Agency named in § 1.1 uses or occupies all or any portion of the Premises, or if there is a substitution of any agency of state government for the User Agency named in § 1.1.

6.6 Alterations and Additions

Tenant has the right to make non-structural alterations or additions to the Premises ("Tenant Alterations"), provided that Tenant must first obtain Landlord's prior written consent, which Landlord must not unreasonably withhold, condition, or delay. Without limiting the foregoing, Landlord has the right to withhold Landlord's consent to any proposed Tenant Alterations that would violate any law, ordinance, code, or regulation of governmental authorities with jurisdiction, or any regulation of the Board of Fire Underwriters or any similar insurance rating body or bodies, or that would materially and adversely affect the appearance or value of the Building, or the mechanical, electrical, sanitary, or any other system of the Building.

As a condition to giving Landlord's consent to any Tenant Alterations, Landlord has the right to require that Tenant remove all or a portion of Tenant Alterations at the expiration or earlier termination of this Lease, provided that Landlord must designate all such items to be removed at the time Landlord gives Landlord's consent.

As a further condition for Landlord's consent, Landlord has the right to require that, before the commencement of the work, Tenant submit to Landlord, for Landlord's approval, plans, and specifications that reasonably fix and describe all of the proposed Tenant Alterations. Landlord agrees to review Tenant's plans and specifications, and to advise Tenant, in writing, of approval or disapproval within ten business days after submission. If Landlord disapproves, Landlord must advise Tenant of the reasons for disapproval of the changes necessary to obtain Landlord's approval. If Landlord fails to notify Tenant of disapproval within ten business days after submission or fails to advise Tenant of the changes necessary to obtain Landlord's approval, Tenant's plans and specifications are deemed approved.

Tenant must (i) do all such Tenant Alterations at reasonable times and in such manner so as not to unreasonably disturb other tenants of the Building, (ii) complete all such Tenant Alterations in accordance with any plans and specifications that Landlord approves and in a good and workmanlike manner, with materials in quality at least equal to the then-present construction, (iii) cause contractors that Landlord approves to perform all such Tenant Alterations, provided that Landlord's approval is not required for any contractor that Tenant selects pursuant to applicable public bidding laws of the Commonwealth of Massachusetts, (iv) perform and complete all such Tenant Alterations in compliance with all applicable laws, ordinances, codes, and regulations of governmental authorities, and with regulations of the Board of Fire Underwriters or any similar insurance body or bodies, and (v) perform and complete all such Tenant Alterations at Tenant's sole expense, including the cost of all design work, materials, labor, and state and local permits. Landlord's approval of any plans and specifications, or changes in plans and specifications, whether expressly given or resulting from Landlord's inaction, must never be construed as a waiver of any of the requirements of this paragraph.

At all times during the construction of any Tenant Alterations, Tenant must cause Tenant's contractors and any subcontractors to maintain workers compensation insurance covering the persons employed in connection with such Tenant Alterations as required by law and, if the estimated construction cost of such Tenant Alterations exceeds \$25,000, to secure and maintain (a) commercial general liability insurance for the mutual benefit of Landlord and Tenant, with limits that Landlord reasonably establishes, to protect against the risks or nature of the construction to be undertaken, or with limits customarily carried in connection with similar work undertaken in buildings similar to the Building in the same locality, and (b) such builders-risk insurance protecting the interests of Landlord and Tenant against damage resulting from such Tenant Alterations in amounts that Landlord reasonably deems necessary. Tenant must not permit Tenant's contractors or any subcontractor to commence any work until all required insurance coverage has been obtained, and certificates evidencing such coverage have been delivered to and approved by Landlord. Each insurance policy must be with a company authorized to do business in Massachusetts and must provide that Landlord be given at least 20 days prior, written notice of any alteration or termination of coverage.

Landlord has the right to inspect the work as the work progresses and to require Tenant to remove any Tenant Alterations that do not conform to the approved plans and specifications. Tenant must not permit any mechanic's liens or similar liens to remain upon the Premises for labor and materials furnished to Tenant, and Tenant must promptly cause any such lien to be released of record or bonded off without cost to Landlord.

All Tenant Alterations must remain the exclusive property of Tenant until Tenant vacates the Premises. At any time, at Tenant's sole option, Tenant has the right to remove any Tenant Alteration and restore the Premises to the same conditions as before the Tenant Alteration, reasonable wear and tear, and damage by fire or other casualty, excepted. Any Tenant Alteration remaining on the Premises after Tenant vacates the Premises becomes the property of Landlord without payment.

6.7 Yield Up at Termination of Lease

At the expiration or other termination of this Lease, Tenant must remove all of Tenant's effects from the Premises. Tenant must surrender and deliver up the Premises to Landlord in the condition in which Tenant is required to maintain the Premises, as set forth in this Lease, reasonable wear and tear, and damage by fire or other casualty, excepted. Any personal property of Tenant remaining upon the Premises after Tenant has surrendered possession of the Premises becomes the property of Landlord. If Landlord removes and disposes of any remaining property, Tenant agrees to pay the reasonable costs of removal and disposal, less any salvage value that Landlord actually recovers, provided that such claim is submitted to Tenant, in writing, within 30 days after Tenant vacates the Premises.

7. CASUALTY; EMINENT DOMAIN

7.1 Damage by Fire or Other Casualty

If fire or other casualty damages the Premises or any other portion of the Building to which Tenant has appurtenant rights under § 2.1 (and that is necessary for reasonable access to or egress from the Premises, or for Tenant's use and enjoyment of the Premises, as this Lease contemplates), then, subject to the next paragraph, Landlord must proceed with diligence to establish and collect all valid claims that arise against insurers, based upon any such damage and, subject to the then applicable building codes, zoning ordinances and other legal requirements, Landlord must proceed with diligence to repair such damage or destruction and to restore the Premises and Building as nearly as practicable to their condition before such casualty, at Landlord's sole expense (but, provided Landlord has maintained the casualty insurance that this Lease requires, only to the extent of insurance proceeds that Landlord's insurers made available to Landlord and to any mortgagee of the Building). Notwithstanding the forgoing, Landlord has no duty to repair any damage to any Tenant Alterations unless the damage was caused by the negligence, breach of this Lease, or willful misconduct of Landlord.

Notwithstanding the preceding paragraph, if either Landlord or Tenant determines, in Landlord's or Tenant's reasonable business judgment, that Landlord cannot be reasonably expected to repair the damage to the Premises or to the Building within 150 days from the date of the fire or other casualty, due to the character of such damage, then either Landlord or Tenant has the right to terminate this Lease. Tenant also has the right to terminate this Lease if Landlord, having notified Tenant of Landlord's intention to repair the damage to the Premises or Building, as provided in this Lease, fails to complete such repairs within 150 days after a fire or other casualty.

The rights of Landlord and Tenant to terminate this Lease if there is a fire or other casualty are subject to the following notice provisions: Within 30 days after the occurrence of a fire or other casualty, Landlord must notify Tenant of Landlord's election to terminate this Lease in

accordance with the preceding paragraph. Tenant must notify Landlord of Tenant's election to terminate this Lease in accordance with the preceding paragraph (i) within 30 days after the occurrence of a fire or casualty or (ii) within 30 days after the expiration of the 150-days' period given to Landlord to repair the Premises if this Lease is not terminated and Landlord fails to complete such repair within said 150-days' period. Any such termination of this Lease by Landlord or Tenant is effective no earlier than 30 days after the giving of notice. Unless so terminated, this Lease remains in full force and effect, subject, however, to other provisions of this § 7.1.

If any damage to the Premises or the Building or if Landlord's repair of either or both (i) renders any part of the Premises unfit for Tenant's use and occupancy or otherwise materially interferes with Tenant's use and occupancy of the Premises, or (ii) causes a material cessation or reduction in Landlord's services under this Lease (even if Tenant continues to use and occupy the Premises), Rent or a just portion of Rent must be abated until the Premises, such services, or both have been restored as required under this Lease.

7.2 Eminent Domain

If all or any substantial part of the Premises or the Building is taken for any public or quasi-public use under governmental law or by right of eminent domain (the "Taking"), this Lease terminates at Landlord's election, which Landlord has the right to make notwithstanding the divestiture of Landlord's entire interest in the Building. Tenant has the right to terminate this Lease if the Taking would materially interfere with Tenant's use and occupancy of the Premises (even if Landlord reconstructs the Premises and Building to the maximum extent practicable in the case of a partial Taking), or, in the case of a partial Taking, if (i) Tenant determines, in Tenant's reasonable business judgment, that Landlord cannot reasonably be expected to complete, within 150 days from the date of the Taking, any reconstruction of the Premises, of the Building, or of both that is necessary for Tenant's use and occupancy of the Premises in accordance with the provisions of this Lease, or (ii) Landlord, having elected not to terminate the Lease, fails to complete such reconstruction within 150 days after the Taking.

The foregoing rights of Landlord and Tenant to terminate this Lease if there is a Taking is subject to the following notice provisions: Within 30 days after a Taking of all or a substantial part of the Premises or the Building, Landlord must notify Tenant of Landlord's election to terminate the Lease in accordance with the preceding paragraph. Tenant must notify Landlord of Tenant's election to terminate the Lease within 30 days after the Taking, or within 30 days after the expiration of the 150-days' period given to Landlord to restore the Premises after a partial Taking if this Lease is not terminated and Landlord has failed to complete such restoration within said 150-days' period. Any such termination of the Lease by Landlord or Tenant is effective no earlier than 30 days after the giving of notice. Unless terminated pursuant to the foregoing provisions, this Lease remains in full force and effect, subject, however to other provisions of this § 7.2.

If Landlord does not terminate this Lease after a Taking, or if the Taking effects less than all or a substantial part of the Premises or the Building, Landlord must proceed with diligence to establish and collect all valid claims that arise against the Taking authority or others and, subject to the then-applicable building codes, zoning ordinances, and other legal requirements, Landlord must proceed with diligence to restore the Premises and the Building, or their remains, as nearly as practicable to their condition before such Taking, at Landlord's sole expense, subject, however, to the extent of the proceeds from the Taking.

If any Taking of the Premises or the Building or if Landlord's restoration of either or both (i) reduces the Usable Area of the Premises, (ii) renders any part of the Premises unfit for Tenant's use and occupancy, or otherwise materially interferes with Tenant's use and occupancy of the Premises, or (iii) causes a material cessation or reduction in Landlord's services under this Lease (even if Tenant continues to use and occupy the Premises), Rent or a just portion of Rent must be abated until the Premises or their remains, such services, or all of them are restored, as this Lease requires. In the case of a Taking that reduces the Usable Area of the Premises, interferes with Tenant's use and occupancy of the Premises, or materially diminishes Landlord's services on a permanent basis, a just portion of Rent must be abated for the remainder of the Term.

Landlord reserves all rights to any damages or compensation payable by reason of any Taking, and Tenant grants to Landlord all of Tenant's rights to such damages or compensation, and covenants to execute and deliver such further instruments as Landlord requests from time to time in order to obtain such damages or compensation, provided, however, that Tenant reserves for Tenant any award specifically reimbursing Tenant for moving or relocation expenses, and any other award, the payment of which does not diminish the amounts otherwise payable to Landlord.

8. INDEMNIFICATION AND INSURANCE

8.1 Indemnification of Tenant by Landlord

Under the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with G. L. c. 12, § 3, Landlord must indemnify, save harmless, and defend Tenant from any and all liability, claim, or cost arising, in whole or in part, out of any injury, loss, or damage to any person or property while on or within the Premises, Building, or appurtenant areas if caused by any negligence, breach of this Lease, or willful misconduct of Landlord or Landlord's employees, agents, contractors, servants, or invitees. This indemnity and hold-harmless agreement includes indemnity against all costs, expenses, and liabilities that Tenant incurs in connection with any such injury, loss, or damage, or any such claim, or any proceeding brought thereon or in defense thereof, including, but not limited to, reasonable legal fees and expenses charged by public or private counsel that Tenant employs. This indemnity survives the Expiration Date.

8.2 Insurance Coverage to be Maintained by Landlord

At all times after the Date of Occupancy and during the Term, Landlord, at Landlord's sole cost and expense, must keep in force a commercial general liability insurance policy insuring Landlord against all claims and demands for personal injury or damage to property that are claimed to have occurred upon or about the Premises, Building, or appurtenant areas. This policy must be written on an occurrence basis to provide protection in an amount not less than \$2,000,000 combined-single-limit for personal injury, death, and property damage, with a so-called "broad-form" endorsement and contractual liability coverage insuring Landlord's performance of the indemnity agreement set forth in § 8.1. This policy also must name Tenant as an additional insured, but only if (i) Tenant occupies at least 20% of the tenanted portion of the Building using Landlord's generally applicable standard of measurement, or (ii) the Usable Area of the Premises exceeds 20,000 square feet.

Landlord also must maintain casualty insurance for the Building (including all fixtures and equipment that Landlord installs, and all alterations and additions that Landlord makes) insuring Landlord against loss or damage that fire and other risks, which are customarily contemplated by “all-risks” endorsements of insurance policies, cause (with such additional endorsements as are necessary to include coverage for vandalism and malicious conduct, floods, boiler explosions, water damage from boilers, plumbing, etc., earthquakes, debris removal, and demolition), in an amount equal to 100% of the replacement cost of the Building and the Building’s fixtures and equipment.

Landlord must take out each insurance policy with insurers qualified to do business in the Commonwealth, and each such insurance policy must have only such deductibles as are reasonable and customary.

On or before the Date of Occupancy, Landlord must provide Tenant with a certificate of insurance, in a form reasonably satisfactory to Tenant, for each required policy of insurance, and must provide Tenant with a certificate evidencing renewal of each such policy at least 20 days before the policy’s expiration. If Tenant is named as an Additional Insured under Landlord’s commercial general liability insurance policy, the policy also must contain an endorsement providing that the policy must not be canceled, terminated, reduced, or changed in any material respect without at least 20 days prior written notice to Tenant.

8.3 Tenant's Self-Insurance

Landlord and Tenant acknowledge and agree that Tenant is self-insured and that this Lease does not require Tenant to procure or maintain insurance of any kind for payment of damages to Landlord or to any other party. Notwithstanding any other provision of this Lease, but subject to the provisions of § 13.1, the provisions of G. L. c. 258 and any successor statute govern Tenant's liability for injuries to persons or property.

8.4 Tenant’s Personal Property; Assumption of Risk

All of the furnishings, equipment, effects, and personal property of every kind and nature of Tenant, and of all persons claiming by, through, and under Tenant, that, during the Term, are on the Premises or in the Building at the sole risk and hazard of Tenant, except for damage or loss caused by Landlord’s negligence, breach of this Lease, or willful misconduct. If fire, water, or other casualty destroys or damages the whole or any part of such personal property, no part of such loss or damage is to be charged to or to be borne by Landlord unless such loss or damage is due to the negligence, breach of this Lease, or willful misconduct of Landlord.

9. DEFAULT

9.1 Event of Default by Tenant

Each of the following is an “Event of Default” by Tenant:

- (a) Tenant fails to pay, when due, any sum of money due to Landlord by Tenant under this Lease, whether such sum is an installment of Rent or any other payment or reimbursement, and such failure continues for a period of ten business days after written notice from Landlord.

- (b) Tenant fails to comply with any other obligation or covenant of Tenant under this Lease, and fails to cure such failure within 30 days after receiving written notice from Landlord specifying such failure, or for those failures that cannot be cured within such 30-days' period, if Tenant fails to commence such cure within such 30-days' period and thereafter fails to diligently pursue such cure to completion.
- (c) Any warranty, representation, or statement that Tenant makes in this Lease is incorrect or misleading in any material respect on the date made.

9.2 Remedies of Landlord

Upon the occurrence of an Event of Default by Tenant, in addition to the remedies described in § 9.3 and any other remedies available to Landlord at law or in equity, Landlord has the right to terminate this Lease upon not less than 60-days'-prior-written notice to Tenant; provided, however, that in the case of a non-monetary Event of Default by Tenant that poses an immediate threat to the health or safety of persons or property, Landlord has the right to reduce said 60-days'-notice period to ten days. Upon such termination, this Lease comes to an end as fully and completely as if the Expiration Date stated in such notice were the Expiration Date originally fixed, and Tenant must then quit and surrender the Premises to Landlord as provided in § 6.7, but Tenant remains liable for damages arising out of such Event of Default, as provided in this Lease.

Upon termination of this Lease by Landlord pursuant to this § 9.2, Tenant must pay to Landlord Rent payable by Tenant to Landlord up to the Expiration Date, and Tenant remains liable for any breach of Tenant's obligations under this Lease occurring before the Expiration Date. In addition, Tenant is liable to pay Landlord, as damages, the aggregate of Rent remaining in the Term.

Tenant must pay Rent in the same manner, to the same extent, and at the same time as if this Lease had not been terminated. In calculating the amounts to be paid by Tenant pursuant to the preceding sentence, Landlord must credit Tenant with the net rents that Landlord actually receives from a reletting of the Premises. Net rents must be determined by deducting from the gross rents, as and when Landlord receives the gross rents from such reletting, the reasonable expenses that Landlord incurs or pays in terminating this Lease and the reasonable expenses that Landlord incurs or pays in connection with the reletting of the Premises that are allocable to the Term. In no event is Tenant entitled to receive any excess of such net rents over the sums that Tenant must pay to Landlord under this Lease. If Landlord terminates this Lease by reason of an Event of Default by Tenant, Landlord must take all reasonable steps to mitigate Landlord's damages, including making reasonable efforts to relet the Premises for a period that is equal to, shorter, or longer than the Term.

9.3 Cure By Landlord

If Tenant fails to perform any of Tenant's obligations, agreements, or covenants under this Lease, and if Tenant does not cure such failure within 30 days after written notice from Landlord specifying the failure or, for those failures that are incapable of being cured within such 30-days' period, if Tenant fails to commence such cure within said 30-days' period and thereafter to diligently pursue such cure to completion, Landlord, at Landlord's sole option, without waiving or limiting any claim for damages, and at any time thereafter, has the right to perform such obligation of Tenant, provided that Landlord, after notice to Tenant (including telephonic notice), has the right to cure any such failure before the expiration of the waiting period described above if the curing of such breach before the expiration of the waiting period is reasonably necessary to

prevent injury or damage to persons or property, including Landlord's interest in the Premises or Building. If Landlord makes any expenditure or incurs any obligation for the payment of money in order to cure Tenant's failure to perform, such sums paid or obligations incurred, to the extent they are reasonable, are due from Tenant to Landlord as additional rent. Landlord must deliver to Tenant an itemized statement of all costs that Landlord incurs to cure Tenant's failure to perform, together with copies of all bills, invoices, receipts, and other documents evidencing such costs. Tenant must pay any additional rent due by reason of such costs with the second installment of Rent due after Landlord delivers such statement to Tenant.

9.4 Event of Default by Landlord

Each of the following is an "Event of Default" by Landlord:

- (a) Landlord fails to comply with any obligation or covenant of Landlord under this Lease and fails to cure such failure within 30 days after receiving written notice from Tenant specifying such failure, or for those failures that cannot be cured within such 30-days' period, if Landlord fails to commence such cure within said 30-days' period and thereafter to diligently pursue such cure to completion.
- (b) Any warranty, representation, or statement that Landlord makes in this Lease is incorrect or misleading in any material respect on the date made.

9.5 Remedies of Tenant

Upon the occurrence of an Event of Default by Landlord, Tenant has the remedies described in § 9.6, if applicable, given the nature of the Event of Default, and Tenant has any other remedies available to Tenant at law or in equity. In addition, if the Event of Default by Landlord is of such a nature that the Event of Default materially interferes with Tenant's use or occupancy of the Premises, in Tenant's reasonable judgment, and Landlord fails to fully cure or eliminate the cause(s) of such Event of Default within 30 days following written notice from Tenant stating that such an Event of Default has occurred, then Tenant also has the right to terminate this Lease by giving Landlord a written Notice of Termination that Tenant must give at least ten days before the Expiration Date stated in such Notice of Termination. Upon the Expiration Date, this Lease comes to an end as fully and completely as if the Expiration Date stated in such notice were the Expiration Date originally fixed, provided, however, that Landlord remains liable for any breach of Landlord's obligations under this Lease occurring before the date of termination, and Tenant is required to comply with the provisions of § 6.7.

9.6 Cure by Tenant

If Landlord fails to perform any obligation, agreement, or condition of Landlord under this Lease, including, but not limited to, failing to make any required repairs or to provide any Building services, and if such failure interferes with Tenant's use or occupancy of the Premises, in Tenant's reasonable judgment, and if Landlord does not cure such failure within 30 days after written notice from Tenant specifying the failure (or, for those failures that are incapable of being cured within such 30-days' period, if Landlord fails to commence such cure within said 30-days' period and thereafter fails to diligently pursue such cure to completion), Tenant, at Tenant's sole option, and without waiving or limiting any claim for damages, at any time thereafter has the right to perform such obligation for Landlord, provided that Tenant has the right to cure any such failure before the expiration of the waiting period described above (but after notice to Landlord, including telephonic notice) if the curing of such failure before the expiration of the waiting

period is reasonably necessary to prevent injury to persons or property. If Tenant makes any expenditure or incurs any obligation for the payment of money in order to cure Landlord's failure to perform as aforesaid, such monies paid or obligations incurred, to the extent they are reasonable, are deemed paid or incurred on behalf of Landlord, and Landlord agrees to reimburse Tenant therefor or save Tenant harmless therefrom. Tenant must deliver to Landlord an itemized statement of all costs that Tenant incurs to cure Landlord's failure to perform, together with copies of all bills, invoices, receipts, and other documents evidencing such costs. Landlord must promptly pay any outstanding bills for labor, materials, or both, and, within 30 days of Tenant's demand, must reimburse Tenant for any amount that Tenant pays on behalf of Landlord. If Landlord fails to reimburse Tenant within such period, Tenant has the right to deduct the amount from the next or any succeeding payments of Rent due under this Lease.

9.7 Remedies Cumulative

Any and all rights and remedies of Landlord and Tenant under this Lease, at law, and in equity, are cumulative and are not to be deemed incompatible with each other, and Landlord and Tenant each has the right to exercise any two or more such rights and remedies simultaneously, to the extent permitted by law.

10. MORTGAGE PROVISIONS

10.1 Estoppel Certificate

Within 20 business days from receipt of a written request from Landlord or any mortgagee of the Building, Tenant must execute and deliver to Landlord a certificate in the form of the then-current *Commonwealth of Massachusetts Estoppel Certificate* that indicates any then-existing exceptions.

10.2 Subordination

Upon the written request of Landlord, Tenant must subordinate this Lease and its lien to the lien of any future mortgage(s) upon the Premises that is (are) held by a bank, insurance company, governmental agency, or other financial institution (or more than one), provided that Landlord and the holder(s) of such mortgage(s) executes and delivers to Tenant the then-current *Commonwealth of Massachusetts Subordination, Non-Disturbance, and Attornment Agreement*. The word "mortgage," as used in this Lease, includes mortgages, deeds of trust, and all similar instruments, and all modifications, extensions, renewals, and replacements thereof.

11. HOLDING OVER

11.1 Holding Over By Tenant

If Tenant or anyone claiming under Tenant remains in possession of the Premises or of any part of the Premises after the expiration of the Term without any agreement in writing between Landlord and Tenant with respect to such possession, then before Landlord's acceptance of Rent, the person remaining in possession is deemed a tenant-at-sufferance. After Landlord's acceptance of Rent, such person is deemed a tenant-from-month-to-month, subject to the provisions of this Lease insofar as the same are applicable to a tenant-from-month-to-month. However, Tenant agrees that Landlord has the right to accept any Rent that Tenant tenders after the expiration or earlier termination of this Lease without prejudice to any claim that Landlord

has for a higher fair-market rent for the Premises, provided that Landlord must give Tenant written notice of such claim *before* acceptance of Rent. Nothing in this § 11.1 is to be construed to give Tenant a right to remain in possession of the Premises after the Expiration Date.

12. FISCAL YEAR APPROPRIATIONS AND AUTHORIZATIONS

12.1 Tenant's Obligations Subject to Appropriations and Authorizations

The fiscal year of the Commonwealth is the 12-months' period ending June 30 of each year. Appropriations and authorizations for expenditures by agencies of the Commonwealth are made on a fiscal-year basis. In accordance with G. L. c. 29, § 27, the obligations of Tenant under this Lease, and under any modification, extension, or renewal of this Lease for any fiscal year, are subject to the appropriation and the allotment of sufficient funds to the User Agency.

12.2 Termination of Lease for Lack of Appropriations and Authorizations

If, for any fiscal year during the Term, sufficient funds for the discharge of Tenant's obligations under this Lease are not appropriated and authorized, then Tenant has the right to terminate this Lease by written notice to Landlord without any liability whatsoever for damages, penalties, or other charges arising from early termination, and without further recourse to either party; provided, however, that Tenant must pay all Rent and any other charges due to Landlord for the period before Tenant's surrender of the Premises, and that Tenant must comply with the provisions of § 6.7 of this Lease.

13. PERSONAL LIABILITY

13.1 Liability of Tenant

No official, employee, or consultant of the Commonwealth of Massachusetts is ever personally liable to Landlord, or to any successor-in-interest to Landlord, or to any person claiming through or under Landlord for or on account of any Event of Default by Tenant or failure by Tenant to perform any of Tenant's obligations under this Lease, or for or on account of any amount that is due or becomes due under this Lease, or for the satisfaction of any judgment against Tenant under this Lease, or on any claim, cause, or obligation whatsoever under this Lease.

13.2 Liability of Landlord

No trustee, beneficiary, partner, director, officer, shareholder, or employee of Landlord is ever personally liable to Tenant, or to any successor-in-interest to Tenant, or to any person claiming through or under Tenant for or on account of any Event of Default by Landlord or failure by Landlord to perform any of Landlord's obligations under this Lease, or for or on account of any amount that is due or becomes due under this Lease, or for the satisfaction of any judgment against Landlord under this Lease, or on any claim, cause, or obligation whatsoever under this Lease. Tenant must look solely to Landlord's interest in the Premises, the Building, and the land upon which the Building is located, and to the rents and profits derived from the Premises, the Building, and said land for the satisfaction of any claim or judgment against Landlord under this Lease. Notwithstanding the foregoing, nothing in this paragraph limits any right that Tenant otherwise has to obtain injunctive relief against Landlord, or to claim the proceeds of any insurance maintained by Landlord for Tenant's benefit or any condemnation proceeds to which

Tenant is entitled under this Lease. In addition, nothing in this § 13.2 limits the recourse of Tenant on account of willful fraudulent conduct.

14. NOTICE

14.1 Notice

- (a) Unless otherwise expressly permitted under this Lease, all notices or other communication required or permitted to be given under this Lease must be in writing, signed by a duly authorized representative of the party giving notice and given by hand delivery (including, without limitation, courier and overnight-delivery service) or mailed by United States certified mail, postage prepaid, return receipt requested.
- (b) Unless otherwise expressly stated in this Lease, notices must be addressed and sent to Landlord at the address appearing for Landlord in § 1.1 and to Tenant at the address appearing for Tenant in § 1.1, with copies to the User Agency (i) at the address of the Premises (after the Date of Occupancy) and (ii) at the address set forth for the User Agency in § 1.1 if different from the address of Tenant.
- (c) Under this § 14, Landlord and Tenant, at any time and from time-to-time, has the right to designate a different address or different addresses to which notices must be sent. Notices sent in this manner are deemed given, for all purposes, (i) on the date shown on the receipt for delivery or (ii) as of the date notice is sent if delivery is refused.

14.2 Special Notice Where Failure to Reply Results in Consent or Approval

If the consent or approval of Landlord or Tenant is deemed under this Lease to be given to a request or submission following a period of non-reply, such consent or approval is effective only if the outside of the envelope containing the request or submission bears the following legend with the appropriate time period filled in, printed in bold-face all-uppercase type at least one-quarter inch high (28-point font):

**NOTICE: THIS REQUEST FOR
APPROVAL REQUIRES
IMMEDIATE REPLY. FAILURE
TO RESPOND WITHIN _____
DAYS RESULTS IN
AUTOMATIC APPROVAL.**

15. FORCE MAJEURE

15.1 Force Majeure Event

Whenever this Lease requires performance on or by a fixed date, or within a fixed time or a reasonable time, if war, fire, flood, or other casualty, or strike, governmental regulation (including any delay in the payment of Rent caused by or resulting from an act or an omission of any branch, agency, or department of the government of the Commonwealth of Massachusetts, other than the User Agency or DCAM), weather, or any other event that is beyond the reasonable control of the party whose performance is required (each a “Force Majeure Event”) delays performance, the time for performance must be extended for a period that is equal to the duration of the delay.

16. MISCELLANY

16.1 Extension

Landlord and Tenant have the right to extend the Term for an Extension Term or Extension Terms not to exceed five years in the aggregate pursuant to mutually agreed upon provisions. This provision must not be construed as granting Landlord or Tenant an option to extend the Term, and no such extension is effective unless and until Landlord and Tenant execute and deliver a written modification of this Lease extending the Term.

16.2 Entire Agreement

This Lease contains all of the agreements between Landlord and Tenant with respect to the subject matter of this Lease and supersedes all prior writings and dealings between Landlord and Tenant with respect to this Lease.

16.3 Changes in Lease

The provisions of this Lease must not be modified in any manner except by a written instrument signed, sealed, and mutually agreed upon by all the parties to this Lease and approved as required by law. No such instrument is void for lack of consideration.

16.4 Binding Agreement

This Lease binds and inures to the benefit of the parties to this Lease and to their respective representatives, successors, and assigns. All provisions of this Lease must be construed as covenants running with the land.

16.5 Governing Law

This Lease must be construed and governed by the laws of the Commonwealth of Massachusetts. Landlord and Tenant agree to bring any Federal or State legal proceedings arising under this Lease, in which the Commonwealth of Massachusetts, the User Agency, or DCAM is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts.

16.6 Waiver

The failure of either party to seek redress for violation or to insist upon the strict performance of any covenant or condition of this Lease does not prevent a subsequent act, that would have originally constituted a violation, from having all the force and effect of a violation. No provision of this Lease is deemed to have been waived by any party unless such waiver is in writing and signed by an authorized representative of the party to be bound by such waiver.

16.7 No Broker

Landlord and Tenant each represents and warrants to the other that no broker, agent, commission salesman, or other person has represented Landlord or Tenant in connection with the procurement or consummation of this Lease.

16.8 Rights and Remedies Not Exclusive

Unless otherwise expressly stated in this Lease, no mention in this Lease of any specific right or remedy precludes Landlord or Tenant from exercising any other right, having any other remedy, or maintaining any action to which Landlord or Tenant otherwise is entitled, either at law or in equity.

16.9 Accord and Satisfaction

Acceptance by Landlord of a lesser sum than Rent then due must not be deemed to be other than on account of the earliest installment of such Rent due, and any endorsement or statement on any check of Landlord or Tenant, or any letter accompanying any check or payment from either Landlord or Tenant to the other, must not be deemed an accord and satisfaction, and Landlord and Tenant each has the right to accept such check or payment without prejudice to such party's right to recover any balance due with respect to such payment or pursue any other remedy provided in this Lease.

16.10 Debarred Contractors

Landlord agrees that Landlord, during the Term, must not accept bids or proposals from, or enter into any contract with, any person or firm for the construction, repair, or maintenance of the Premises if such person or firm is debarred or suspended from contracting with the Commonwealth of Massachusetts under any applicable debarment statute or regulation.

16.11 Time of Essence

Time is of the essence to this Lease and to each of its provisions.

16.12 Non-Discrimination in Employment

Landlord must not discriminate against any qualified employee, applicant for employment, contractor, or person or firm seeking to provide goods or services to Landlord because of race, ethnicity, color, national origin, ancestry, age, gender, religion, belief, physical or mental handicap, or sexual orientation or preference. Landlord must comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment.

16.13 Severability

If any provision of this Lease is declared to be illegal, unenforceable, or void, then Landlord and Tenant are relieved of all obligations under that provision (or the application of that provision under circumstances in which that provision is illegal or unenforceable), provided, however, that the remainder of this Lease must be enforced to the fullest extent permitted by law.

16.14 Notice of Lease

Upon the request of Tenant, Landlord must execute and deliver to Tenant a recordable notice of this Lease.

16.15 No Agreement Until Signed

No legal obligation arises with respect to the Premises or other matters covered by this Lease until this Lease is executed by Landlord and by the Commonwealth of Massachusetts acting by and through its Division of Capital Asset Management and Maintenance (the Commissioner of the Division of Capital Asset Management and Maintenance is joined by an authorized representative of the User Agency as an adjunctive signatory), and delivery is made by and to each.

16.16 State Employees Barred from Interest

No official, employee, or consultant of the Commonwealth of Massachusetts must ever have any personal interest, direct or indirect, in this Lease or in Landlord, or participate in any decision relating to this Lease that affects the personal interest of such official, employee, or consultant, or that affects the interest of any corporation, partnership, or association in which such official, employee, or consultant is, directly or indirectly, interested.

16.17 Paragraph Headings

The paragraph headings in this Lease are for convenience of reference only and in no way define, increase, or limit the scope or intent of any provision of this Lease.

16.18 Counterparts

This Lease is executed in multiple counterparts, each such counterpart is an original for all intents and purposes, and all such counterparts together constitute one and the same Lease.

16.19 Rider, Exhibits, and Other Attached Documents

Each attached rider, exhibit, other document is an integral part of this Lease for all lawful intents and purposes.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

Landlord and Tenant have executed multiple counterparts of this document, under seal in accordance with the laws of the Commonwealth of Massachusetts, Tenant having done so by the Commissioner of the Division of Capital Asset Management and Maintenance, who was joined by an authorized representative of the User Agency as an adjunctive signatory, neither of whom incurs any personal liability as a result of such signature.

LANDLORD:

By: _____

Printed Name: _____

Title: _____

**TENANT: COMMONWEALTH OF MASSACHUSETTS ACTING BY AND
THROUGH ITS DIVISION OF CAPITAL ASSET MANAGEMENT AND
MAINTENANCE**

By: _____

David B. Perini, Commissioner, who certifies, under penalties of perjury, that he has fully complied with the advertising requirements of G. L. c. 7, § 40H, in connection with the property described in this document.

USER AGENCY:

By: _____

Printed Name: _____

Title: _____

Approved as to Matters of Form:

R. Edward Buice, Deputy General Counsel
Division of Capital Asset Management and Maintenance

RIDER TO LEASE

DATE OF LEASE:

LANDLORD:

TENANT: The Commonwealth of Massachusetts (“Tenant”) acting by and through its
Division of Capital Asset Management and Maintenance (“DCAM”) of the
Executive Office for Administration and Finance on behalf of the User Agency

BUILDING ADDRESS:

PREMISES:

Modify this Lease as follows:

Landlord and Tenant have executed multiple counterparts of this document, under seal in accordance with the laws of the Commonwealth of Massachusetts, Tenant having done so by the Commissioner of the Division of Capital Asset Management and Maintenance, who was joined by an authorized representative of the User Agency as an adjunctive signatory, neither of whom incurs any personal liability as a result of such signature.

LANDLORD:

By: _____

Printed Name: _____

Title: _____

**TENANT: COMMONWEALTH OF MASSACHUSETTS ACTING BY AND
THROUGH ITS DIVISION OF CAPITAL ASSET MANAGEMENT AND
MAINTENANCE**

By: _____

David B. Perini, Commissioner, who certifies, under penalties of perjury, that he has fully complied with the advertising requirements of G. L. c. 7, § 40H, in connection with the property described in this document.

USER AGENCY:

By: _____

Printed Name: _____

Title: _____

Approved as to Matters of Form:

R. Edward Buice, Deputy General Counsel
Division of Capital Asset Management and Maintenance

LANDLORD'S BENEFICIAL-INTEREST-DISCLOSURE STATEMENT

Pursuant to G. L. c.7, § 40J¹, the undersigned _____, _____ of
(Name) (Title)
_____ certifies the following:
(Full name(s) of Landlord, as Landlord's name(s) appear(s) in the Lease)

(1) DESCRIPTION & ADDRESS OF LEASED PREMISES:

(2) TERM From: _____ to: _____

(3) LANDLORD NAME and ADDRESS:

(4) TENANT: Commonwealth of Massachusetts

(5) Name and address of **all** persons who have or will have a direct or indirect beneficial interest in the above property of Landlord (including prospective purchasers). **Please note: Do not write "none."**

NAME

ADDRESS

(6) **None** of the above mentioned persons is an employee of the Division of Capital Asset Management and Maintenance ("DCAM") or an official elected to public office in the Commonwealth of Massachusetts, **except** as listed below. **Please note: If none, write "none"; do not leave blank.**

NAME

DCAM OR PUBLIC-OFFICE TITLE

(7) The undersigned further agrees that a new Disclosure Statement must be made in writing, under penalty of perjury, during the Term in case of any change of interest in such property, within 30 days of such change.

Signed under the penalties of perjury on _____, 20_____.

Signature of Person whose Name and Title
appear at the top of this page

¹ "No agreement to rent ... real property to a public agency, and no renewal or extension to such agreement, shall be valid and no payment shall be made to the lessor ... of such property, unless a statement, signed, under penalties of perjury, has been filed by the lessor, ... and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the commissioner of capital asset management and maintenance." (G. L. c. 7, § 40J).

CERTIFICATE OF TAX-AND-EMPLOYMENT-SECURITY COMPLIANCE

Pursuant to General Laws chapter 62C, §49A¹, and General Laws chapter 151A, §19A(b)², _____,
(Name)

_____ of _____,
(Title) (Name of Landlord)

whose principal place of business is located at _____

_____, certifies that:

- A. Landlord has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.
- B. Landlord has complied with all laws of the Commonwealth relating to employment-security contributions and payments in lieu of contributions.

Signed under the penalties of perjury on _____, 20_____

Federal Identification Number

Signature of Person whose Name and Title
Appear at the top of this page

¹ "No contract or other agreement for the purposes of providing ... real estate space to any ... agencies [of the Commonwealth] shall be entered into, renewed or extended with any person unless such person certifies in writing, under penalties of perjury, that he had complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support."

² "No contract or other agreement for the purpose of providing ... physical space to any agency or instrumentality of the commonwealth shall be entered into, renewed or extended with any employer unless such employer certifies in writing, under penalties of perjury, that said employer has complied with all laws of the commonwealth relating to [employment-security] contributions and payments in lieu of contributions."

**SAMPLE FIRST AMENDMENT TO LEASE AND LEASE EXTENSION, FORM
DPL**

COMMONWEALTH OF MASSACHUSETTS

[NUMBER] AMENDMENT TO LEASE
AND LEASE EXTENSION

This [NUMBER] Amendment to Lease and Lease Extension (this "[NUMBER] Amendment") is made on _____, 20____, by and between [NAME OF LANDLORD] ("Landlord"), and the Commonwealth of Massachusetts by its Division of Capital Asset Management and Maintenance (**f/k/a the Division of Capital Planning and Operations**) on behalf of the [NAME OF USER AGENCY] ("Tenant").

Landlord and Tenant entered into a lease (the "Lease") dated _____, for certain premises consisting of _____ square feet of space (the "Premises") in the building located at [ADDRESS AND CITY OR TOWN OF LEASED PREMISES], Massachusetts.

The term of the Lease (the "Term") commenced [DATE OF OCCUPANCY], and expires [TERMINATION DATE].

[SEE INSTRUCTIONS REGARDING ADDITIONAL RECITALS]

Landlord and Tenant desire to extend the Term for a period of _____[months/years], *[if applicable, to increase/decrease the rental rate, to make certain improvements, to increase the amount of space leased to Tenant, etc.]* and to modify certain Lease terms and provisions.

In consideration of the mutual promises contained in the Lease, *[if applicable, as previously amended]*, and in this [NUMBER] Amendment, Landlord and Tenant agree as follows:

[SEE SAMPLES FILE FOR ADDITIONAL STANDARD LANGUAGE NEEDED FOR BUSINESS TERMS]

1. The Term is extended for a period of _____ [months/years], commencing [ONE DAY AFTER ORIGINAL LEASE TERMINATION DATE] and ending [NEW LEASE TERMINATION DATE] at 11:59 p.m. (the "Extended Term").
2. During the Extended Term, the rental rate shall remain at [\$_____] per square foot, resulting in an annual fixed rent of [\$_____], payable in equal monthly installments of [\$_____].
3. Tenant may terminate the Lease, as amended, without cause, by giving Landlord written notice not less than _____ days before the effective date of termination. On the effective date of termination, the obligations and liabilities of Landlord and Tenant shall end (except for those which, under the Lease, continue after termination,) as if the Extended Term had expired on such date.
4. Landlord warrants and represents that Landlord's name appears in this [NUMBER] Amendment exactly as Landlord's name appears on Landlord's record title to the Premises, if Landlord owns the Premises, or exactly as Landlord's name appears in Landlord's lease, if the Lease, *[if applicable, as previously amended]*, is a sublease.

5. Landlord warrants and represents that Landlord has full legal capacity to enter into this [NUMBER] Amendment.

6. If Landlord is not a natural person or natural persons, but Landlord is, rather, a so-called “creature of the law” (e.g., a corporation, a general or limited partnership, a trust, a limited liability company, etc.), Landlord warrants and represents that Landlord is validly organized and existing, that Landlord is in good standing in the state, commonwealth, territory, or jurisdiction of its organization, and that Landlord is authorized and qualified to do business in the state, commonwealth, territory, or jurisdiction in which the Premises are located.

7. Landlord warrants and represents that the execution of this [NUMBER] Amendment has been duly authorized and that each person executing this [NUMBER] Amendment on behalf of Landlord has full authority to do so and to fully bind Landlord thereby.

8. All terms in this [NUMBER] Amendment shall have the same meanings that are given to them in the Lease, *[if applicable, as previously amended]*, unless otherwise indicated in this [NUMBER] Amendment.

9. Except as modified by this [NUMBER] Amendment, all other provisions, obligations, and covenants that are contained in the Lease, *[if applicable, as previously amended]*, shall remain in effect, and shall be performed and completed as agreed in the Lease, as previously amended.

10. The attached exhibits are integral parts of this [NUMBER] Amendment for all purposes.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

[SEE INSTRUCTIONS REGARDING EXHIBITS AND EXECUTION]

Landlord and Tenant have executed multiple counterparts of this document, under seal in accordance with the laws of the Commonwealth of Massachusetts, the Commonwealth of Massachusetts having done so by the Commissioner of the Division of Capital Asset Management and Maintenance, who was joined by an authorized representative of the User Agency as an adjunctive signatory, neither of whom incurs any personal liability as a result of such signature.

LANDLORD:

BY: _____

PRINTED NAME: _____

TITLE: _____

TENANT:

COMMONWEALTH OF MASSACHUSETTS ACTING BY AND THROUGH ITS
DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE

BY: _____
David B. Perini, Commissioner

USER AGENCY: _____

BY: _____

PRINTED NAME: _____

TITLE: _____

Approved as to Matters of Form:

R. Edward Buice, Deputy General Counsel for Leasing
Division of Capital Asset Management and Maintenance

STANDARD TENANT ESTOPPEL CERTIFICATE, FORM DPL

**THIS OFFICIAL FORM MAY NOT BE
ALTERED**

**COMMONWEALTH OF MASSACHUSETTS
STANDARD TENANT ESTOPPEL CERTIFICATE
Form DPL**

Date of Certificate: As of _____, _____

Lender:

Landlord:

Tenant: Commonwealth of Massachusetts acting by and through its Division of Capital
Asset Management and Maintenance on behalf of the User Agency,

Lease: Lease between Landlord and Tenant dated _____, as amended by
the following Lease Amendments:

_____, dated _____
_____, dated _____
_____, dated _____
_____, dated _____

Building:

Leased Premises: _____ usable square feet on the _____ floor(s) of the Building and
designated as Room/Suite No. _____, as more particularly described in
Sections 1.1, 2.1 and 2.2 of the Lease and in the Exhibits to the Lease

Lease Terms: Term Commencement Date: _____
Scheduled Expiration Date: _____
Amount of monthly rent: _____
Date through which rent has been paid : _____
Number of reserved parking spaces: _____

The undersigned hereby certifies as follows:

1. Lease:

- (a) The Lease is in full force and effect according to its terms and has not been amended , except as noted above. The Lease constitutes the entire agreement between Landlord and Tenant with respect to the Leased Premises.
- (b) The term of the Lease began on the Commencement Date and is scheduled to expire on the Scheduled Expiration Date. Tenant has no right or option to renew or extend the term of the Lease or to expand or purchase the Leased Premises, except as provided in the Lease.
- (c) The Lease Terms set forth above are true.

2. Defaults and Defenses :

Except as provided in Exhibit A attached hereto and made a part hereof:

- (a) There is no Event of Default (as defined in the Lease) by either Landlord or Tenant under the Lease.
- (b) To the best of Tenant's knowledge, no event has occurred which, with the giving of notice or the passing of time or both, will result in an Event of Default by Landlord under the Lease.
- (c) As of the date hereof, to the best of Tenant's knowledge, Tenant has no defenses against the enforcement of the Lease or charges, liens or offsets against payment of rent due or to become due.

3. Rent:

- (a) No rent has been paid more than one month in advance of its due date.
- (b) Except as otherwise provided in the Lease, Tenant is not entitled to, and has not made any agreement with the Landlord or its agents or employees concerning free rent, partial rent, rebate of rent payments, credit or deduction in rent, or any other rental concession.

4. Landlord's Improvements :

Except as otherwise provided in Exhibit A:

- (a) All of Landlord's Improvements (as defined in the Lease) to be provided by Landlord have been completed to Tenant's satisfaction as of the date hereof. To the best of Tenant's knowledge, all of the obligations on the part of the Landlord under the Lease for the performance of any such work have been carried out and performed in full, and, as of the date hereof, Tenant has no claim against Landlord for the incomplete performance of any such work or on account of any known defect therein.
- (b) Tenant is not aware of any defects in the Leased Premises or in any of Landlord's Improvements constructed elsewhere in the Building.

5. Occupancy:

- (a) Tenant now occupies the entire Leased Premises for the purposes permitted under the terms of the Lease and is actively conducting its business therein.
- (b) Tenant has not Transferred (as defined in the Lease) any portion of the Leased Premises, nor assigned any of its rights under the Lease.

Executed as a sealed instrument, governed by the laws of the Commonwealth of Massachusetts and effective as of the date first written above.

TENANT

COMMONWEALTH OF MASSACHUSETTS ACTING BY AND
THROUGH ITS DIVISION OF CAPITAL ASSET MANAGEMENT
AND MAINTENANCE

BY:

—

David B. Perini, Commissioner

USER AGENCY: _____

BY:

—

PRINTED NAME:

TITLE:

—

EXHIBIT A

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT,
FORM DPL**

**THIS OFFICIAL FORM MUST NOT BE ALTERED.
ALL MODIFICATIONS MUST BE MADE BY SEPARATE RIDER.**

**COMMONWEALTH OF MASSACHUSETTS
STANDARD SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENMENT AGREEMENT
Form DPL**

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT (this "**Agreement**") is made on _____, by and among _____ ("**Mortgagee**"), _____ ("**Landlord**"), and the Commonwealth of Massachusetts ("**Tenant**") by its Division of Capital Asset Management and Maintenance on behalf of the User Agency _____.

Landlord owns certain real property located in _____ County, Massachusetts, and more particularly described in Exhibit A attached hereto and incorporated herein (the "**Property**").

Landlord and Tenant made and entered into that certain lease dated _____, 20__ (said lease, together with any and all amendments and extensions thereto, the "**Lease**") with respect to certain premises (the "**Premises**") located on the Property.

Mortgagee made a loan to Landlord that is secured by a mortgage (the "**Mortgage**") upon the Premises and an assignment of leases and rents (the "**Assignment**") (said Mortgage and Assignment collectively the "**Security Documents**") that are recorded in the _____ County Registry of Deeds.

Mortgagee, Landlord, and Tenant desire to confirm their understanding with respect to the Lease and the Security Documents.

In consideration of the mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, hereby covenant and agree as follows:

1. Subordination

Subject to the provisions of this Agreement, Tenant agrees that the Lease, as modified from time to time, is subject and subordinate at all times and in all respects to the lien of the Security Documents, to all of the provisions of the Security Documents, to all renewals, modifications, replacements, consolidations, and extensions of the Security Documents, and to all subsequent advances and payments made under the Security Documents. Mortgagee acknowledges that any subsequent increases, renewals, modifications, replacements, consolidations, and extensions of the Security Documents may not abrogate the provisions of this Agreement without the written consent of Tenant and that same must specifically reference that they are subject to the provisions of this Agreement.

2. Attornment

- (a) If Mortgagee takes possession of the Premises or acquires or succeeds to the interest of Landlord under the Lease by reason of a foreclosure of the Mortgage, deed-in-lieu of foreclosure, or otherwise (collectively, a "**Foreclosure**"), Tenant is bound to Mortgagee and to any person purchasing at foreclosure or otherwise acquiring the interest of Landlord under the Lease as a result of a Foreclosure ("**Purchaser**"), under

all of the provisions of the Lease, except as provided in this Agreement, for the balance of the Term with the same force and effect as if Mortgagee or Purchaser is Landlord. In such event Tenant agrees to attorn to Mortgagee or to such Purchaser as landlord under the Lease and, upon receiving notice from Mortgagee as provided in item 6 of this Agreement, to make payments of all sums becoming due under the Lease directly to Mortgagee or to Purchaser. Said attornment and agreement is effective and self-operative without the execution of any further instruments (except for standard payment-authorization documents, including without limitation disclosures of beneficial interests and certificates of tax and employment-security compliance, that required to be completed by parties receiving payments from state agencies) upon Mortgagee taking possession of the Premises or otherwise succeeding to the interests of Landlord under the Lease. Nevertheless, Tenant, Mortgagee, and Purchaser from time to time must execute and deliver such instruments evidencing such attornment and the provisions of Paragraph 2(b) as Mortgagee, Purchaser, and Tenant may reasonably require.

- (b) From and after such attornment, Mortgagee or any Purchaser automatically is bound to Tenant under all the provisions of the Lease with the same force and effect as if originally entered between said parties without the execution of any further instruments; provided, however, Mortgagee or Purchaser are not:
 - (i) liable for any act, omission, neglect, breach of obligation under the Lease or Event of Default of any prior landlord (including Landlord) occurring before the date on which Mortgagee or Purchaser succeeds to the interest of Landlord in the Premises or obtains possession of the Premises, except as provided in item 2.(c) of this Agreement; provided, however, that following the date of attornment, the foregoing does not limit Mortgagee's or Purchaser's obligation as Landlord under the Lease to cure any continuing defaults of Landlord pursuant to the provisions set forth in the Lease, notwithstanding that such defaults existed as of the date of attornment;
 - (ii) subject to any offsets and defenses that Tenant may have against any prior landlord (including Landlord) except as provided in item 2.(c) below; provided, however, that the foregoing does not limit Tenant's right to assert against Mortgagee or Purchaser any offset, defense, or both otherwise available to Tenant because of events occurring or continuing after the date of attornment;
 - (iii) bound by any payment of fixed rent, percentage rent, or additional rent that Tenant may have made to any prior landlord (including Landlord) more than 30 days before the date such rent was first due and payable under the Lease and that has not actually been delivered to Mortgagee or Purchaser; provided however, that Mortgagee and Purchaser are bound by any such prepayment of rent or other charge made more than 30 days in advance if such prepayment is the result of the Comptroller of the Commonwealth of Massachusetts changing the rent-payment schedule for state agencies from payment in arrears (as provided in certain state-agency Leases) to payment-in-advance for the current month;
 - (iv) liable for the return of any security deposit that Tenant may have paid to any prior landlord (including Landlord), unless such security deposit is actually delivered to Mortgagee or Purchaser;
 - (v) bound by any modification or amendment of the Lease made after the date of this Agreement that reduces the Rent, changes the Term, or otherwise materially

changes the rights and obligations of Landlord, Mortgagee, or both under the Lease, or relieves Tenant of any material obligation under the Lease unless Landlord obtains Mortgagee's prior written consent to such modification or amendment, or confirmation that Mortgagee's consent is not required under any agreement between Mortgagee and Landlord; or

(vi) bound by any consensual or negotiated surrender of the Premises or termination of the Lease, in whole or in part, agreed upon between any prior landlord (including Landlord) and Tenant unless effected pursuant to the express provisions of the Lease, or with the Mortgagee's consent, or with confirmation that Mortgagee's consent is not required under any agreement between Mortgagee and Landlord.

(c) Notwithstanding anything to the contrary contained in item 2.(b) or elsewhere in this Agreement, if Landlord commits an act or omission that, with the giving of notice, the passage of time, or both would constitute an event of default by Landlord under the Lease, Mortgagee or any Purchaser is subject to any and all claims, offsets, and defenses of Tenant arising from such act or omission, provided that Mortgagee receives notice of such act or omission and is given an opportunity to cure same (subject to Tenant's right to take emergency self-help action as provided in the Lease) as required by this Agreement.

3. Notice of Default by Landlord

(a) Tenant must forward to Mortgagee a copy of any notice given by Tenant to Landlord (i) in which Tenant claims or alleges that Landlord failed to perform any of Landlord's obligations under the Lease, (ii) in which Tenant claims or alleges that an Event of Default by Landlord exists under the Lease, (iii) demanding reimbursement for expenditures made or obligations incurred by Tenant pursuant to the Lease, or (iv) terminating the Lease. Such copies must be forwarded to Mortgagee concurrently with the giving of any such notice to Landlord under the Lease.

(b) If any act or omission of Landlord would give Tenant the right, immediately or after the lapse of a period of time, to cancel or terminate the Lease, to abate Rent payable under the Lease, or to claim a partial or total eviction, Tenant must not exercise such right until (i) Tenant has given written notice of such act or omission to Mortgagee and (ii) 30 days after Landlord's cure period, if any, under the Lease expires, during which period Mortgagee has the right, but not the obligation, to remedy such act or omission, and Tenant must give Mortgagee access to the Premises to effectuate the same. Item 3.(b)(ii) does not apply to an abatement of Rent pursuant to the Lease. Tenant may exercise Tenant's self-help remedy under the Lease after notice to Mortgagee but before the expiration of the waiting period provided by item 3.(b)(ii) if the curing of the default of Landlord before the expiration of the Mortgagee's cure period is reasonably necessary to prevent injury to persons, property, or both.

4. Non-Disturbance

If the Security Documents are executed, acknowledged, delivered, and recorded before the Lease and before any notice or memorandum of Lease, or if any provision in any of the Security Documents is to the contrary, or both, Mortgagee nevertheless agrees for Mortgagee and for Mortgagee's successors-in-interest (including, without limitation, any Purchaser) that if Mortgagee takes possession of the Premises, if there is a Foreclosure, or both, the Lease

must not be terminated by Mortgagee except in accordance with the provisions of the Lease, and that unless and until the Lease is actually and finally terminated in accordance with the provisions of the Lease, (i) Tenant's possession, occupancy, use, and enjoyment of the Premises and Tenant's rights and privileges under the Lease during the Term, including any extended or renewal Term, must not be disturbed or interfered with, (ii) Mortgagee must recognize the Lease and Tenant's rights under the Lease, and (iii) Tenant and Tenant's successors and assigns must not be made a party in any action or proceeding to foreclose the Mortgage or otherwise enforce the rights of Mortgagee or any other party under the Security Documents.

5. Assignment of Leases

- (a) Tenant acknowledges that Landlord's right, title, and interest as Landlord under the Lease is assigned to Mortgagee pursuant to the provisions of the Assignment and that pursuant to the provisions of the Assignment Rent under the Lease continues to be paid to Landlord in accordance with the provisions of the Lease unless and until Tenant is otherwise notified in writing by Mortgagee. From and after Tenant's receipt of written notice from Mortgagee (a "Rent Payment Notice"), Tenant must pay all Rent to Mortgagee or as Mortgagee directs in writing, until such time as Mortgagee directs otherwise in writing. Tenant must comply with any Rent Payment Notice notwithstanding any contrary instruction, direction, or assertion from Landlord. Neither Mortgagee's delivery to Tenant of a Rent Payment Notice nor Tenant's compliance with a Rent Payment Notice is not deemed to (a) cause Mortgagee to succeed to or to assume any obligations and responsibilities as Landlord under the Lease, all of which continue to be performed and discharged solely by Landlord unless and until any attornment occurs pursuant to this Agreement; or (b) relieve Landlord of any obligations under the Lease. Landlord irrevocably directs Tenant to comply with any Rent Payment Notice, notwithstanding any contrary direction, instruction, or assertion by Landlord. Tenant is entitled to rely on any Rent Payment Notice.
- (b) Tenant is under no duty to controvert or challenge any Rent Payment Notice. Tenant's compliance with a Rent Payment Notice must not be deemed to violate the Lease. Landlord releases Tenant from, and must indemnify and hold Tenant harmless, under the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with G.L. c. 12, § 3, from and against, any and all loss, claim, damage, liability, cost, and expenses (including payment of reasonable attorneys' fees and disbursements) arising from any claim based upon Tenant's compliance with any Rent Payment Notice. Landlord must look solely to Mortgagee with respect to any claims Landlord may have on account of an incorrect or wrongful Rent Payment Notice. Tenant is entitled to full credit under the Lease for any Rent or other sums paid to Mortgagee pursuant to a Rent Payment Notice to the same extent as if such Rent or other sums are paid directly to Landlord.

6. Notices

- (a) Unless otherwise expressly permitted under this Agreement, all notices or other communication required or permitted to be given under this Agreement must be in writing, signed by a duly authorized representative of the party giving notice, and given by hand delivery (including without limitation, courier and overnight delivery service), or mailed by United States certified mail, postage prepaid, return receipt requested.

- (b) Unless otherwise expressly stated in this Agreement, notices and copies of notices, as provided in item 6.(d) of this Agreement, must be addressed and sent to the parties and to copy recipients at the respective addresses provided in item 6.(d) of this Agreement.
- (c) Under this item 6, the parties, at any time and from time-to-time, may designate a different address or different addresses to which notices must be sent. Notices sent in this manner are deemed given, for all purposes, (i) on the date shown on the receipt for delivery or (ii) as of the date notice is sent if delivery is refused.
- (d) Addresses for notices and copies of notices:

Mortgagee:

Tenant:

Office of Leasing and State Office Planning
Commonwealth of Massachusetts
Division of Capital Asset Management and Maintenance
One Ashburton Place, 15th Floor
Boston, Massachusetts 02108-1511

with copies to:

Office of the General Counsel
Commonwealth of Massachusetts
Division of Capital Asset Management and Maintenance
One Ashburton Place, 15th Floor
Boston, Massachusetts 02108-1511

and to the User Agency at

Landlord:

7. Miscellany

- (a) This Agreement (i) contains the entire agreement with respect to the subject matter of this Agreement, (ii) may not be modified or terminated, including the waiver of any provision, other than by an agreement in writing signed by the parties to this Agreement or by their respective successors and (iii) inures to the benefit of, and is binding upon, the parties to this Agreement and their respective successors (including, without limitation, (A) Tenant's permitted assignees, (B) any subsequent holder of the Security Documents, and (C) any purchaser or grantee of the Property pursuant to a Foreclosure).
- (b) Mortgagee warrants and represents that Mortgagee's name appears in this Agreement exactly as Mortgagee's name appears on the Security Documents.
- (c) Mortgagee warrants and represents that Mortgagee has full legal capacity to enter into this Agreement.
- (d) If Mortgagee is not a natural person or natural persons, but Mortgagee is, rather, a so-called "creature of the law" (e.g., a corporation, a general or limited partnership, a trust, a limited liability company, national bank, etc.), Mortgagee warrants and represents that Mortgagee is validly organized and existing, that Mortgagee is in good standing in the state, commonwealth, province, territory, or jurisdiction of Mortgagee's organization, and that Mortgagee is authorized and qualified to do business in the state, commonwealth, province, territory, or jurisdiction in which the Premises are located.
- (e) Mortgagee warrants and represents that the execution of this Agreement is duly authorized and that each person executing this Agreement on behalf of Mortgagee has full authority to do so and to fully bind Mortgagee thereby.

8. Expiration

All consent rights, approval rights, rights to receive notices, rights to cure defaults, and other similar rights granted Mortgagee in this Agreement automatically expire and terminate upon the release or discharge of the lien of Mortgagee on the Property.

9. Capitalized Words

Unless otherwise defined in this Agreement or otherwise indicated in this Agreement, all capitalized words used in this Agreement that are defined in the Lease have the same meaning as set forth in the Lease.

10. Applicable Law

This Agreement is governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

THE REMAINDER OF PAGE IS DELIBERATELY LEFT BLANK.

Landlord, Mortgagee, and Tenant have executed multiple counterparts of this document, under seal in accordance with the laws of the Commonwealth of Massachusetts, the Commonwealth of Massachusetts having done so by the Commissioner of the Division of Capital Asset Management and Maintenance, who was joined by an authorized representative of the User Agency as an adjunctive signatory, neither of whom incurs any personal liability as a result of such signature.

MORTGAGEE

By: _____
Printed Name: _____
Title: _____

LANDLORD

By: _____
Printed Name: _____
Title: _____

TENANT

COMMONWEALTH OF MASSACHUSETTS
ACTING BY AND THROUGH ITS DIVISION OF
CAPITAL ASSET MANAGEMENT AND
MAINTENANCE

By: _____
David B. Perini, Commissioner

USER AGENCY

By: _____
Printed Name: _____
Title: _____

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OR STATE OF _____)(
_____)
COUNTY OF _____)(ss.
_____)

On _____, 20____, before me, the undersigned notary public, personally appeared
_____, proved to me through satisfactory evidence of identification
to be the person whose name is signed on the preceding or attached document, and acknowledged to me that said
person voluntarily signed said document for the purpose stated within said document.

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OR STATE OF _____)(
_____)
COUNTY OF _____)(ss.
_____)

On _____, 20____, before me, the undersigned notary public, personally appeared
_____, proved to me through satisfactory evidence of identification
to be the person whose name is signed on the preceding or attached document, and acknowledged to me that said
person voluntarily signed said document for the purpose stated within said document.

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OR STATE OF _____)(
_____)(
COUNTY OF _____)(ss.

On _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that said person voluntarily signed said document for the purpose stated within said document.

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OR STATE OF _____)(
_____)(
COUNTY OF _____)(ss.

On _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that said person voluntarily signed said document for the purpose stated within said document.

EXHIBIT A

Legal Description